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BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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In the matter of: :
TECHNICAL CONFERENCE ON :
IMPLEMENTING SECTION 6 OF :
THE HYDROPOWER REGULATORY :
EFFICIENCY ACT OF 2013 :
- - - - - x

Room 2C

Federal Energy Regulatory Commission

888 First Street, Northeast

Washington, D.C. 20426

Tuesday, October 22, 2013

The Two-Year Licensing Process Workshop was
convened at 12:02 p.m., pursuant to Commission notice of
October 8, 2013, when were present:

PANELISTS:

FERC STAFF:

TIMOTHY KONNERT, Facilitator

JOHN KATZ, Office of General Counsel

ANN MILES, Office of Energy Projects

1 PANELISTS:

2 BRIAN FITZGERALD, Vermont Agency of Natural Resources

3 MELANIE HARRIS, NOAA Fisheries

4 SARAH HILL-NELSON, Bowersock Mills and Power Company

5 DANIEL LISSNER, Free Flow Power Corporation

6 CHRIS MAYNARD, Washington Department of Ecology

7 KYLE JONES, U.S. Army Corps of Engineers

8 JOHN SEEBACH, American Rivers

9 JOHN P. WARNER, U.S. Fish and Wildlife Service

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17 Court Reporter: Jane W. Beach, Ace-Federal

18 Reporters, Inc.

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P R O C E E D I N G S

(12:02 p.m.)

MR. KONNERT: Are we ready to begin?

Well good afternoon and welcome to the Commission's workshop on investigating the feasibility of a two-year licensing process for hydropower projects located at non-powered dams and closed-loop pumped storage projects under Docket AD13-9-000, as required by Section 6 of the Hydropower Regulatory Efficiency Act.

Although the Act affects other aspects of hydropower authorization, we will just be discussing what is required under Section 6 here today.

I would like to start off by first thanking all of our participants for being here, both in person and on the phone, for what I am sure will be an informative discussion.

We are going to begin the workshop with some opening remarks from Commissioner Moeller and Commissioner Norris, after which we will introduce FERC staff and our panel members up here at the table.

I am going to go over the ground rules for the workshop, and then I am going to give a brief presentation on the legislation that brought us here today, as well as FERC's experience in expedited licensing. And then we're going to move forward with soliciting input from all of you

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1 regarding the feasibility of a two-year licensing process.

2 A couple of items before we hear from the
3 Commissioners:

4 Please turn off all cell phones as they do
5 interfere with our audio/visual equipment.

6 Also, no food or drinks other than bottled water
7 are allowed in the Commission meeting room.

8 And while it was not specified in the agenda, we
9 do plan on taking a brief five-minute break around 2:00 p.m.
10 Bathrooms and water fountains are located outside the
11 meeting room at the back of each of our elevator bays.

12 Let me now turn it over to the Commissioners for
13 their opening remarks.

14 COMMISSIONER MOELLER: Thank you, Tim, and
15 welcome everyone who is here and on the phone on an
16 important subject. I appreciate all the staff work that has
17 been put into this not once but twice, in terms of
18 scheduling this.

19 I guess Bob Easton gets special thanks for his
20 team. Also, our panelists, some of whom have come from a
21 ways away, a special welcome to Mr. Maynard from my home
22 State of Washington, and my good friend Sarah Hill-Nelson.
23 I was able to see the new and expanded Bowersock Project in
24 Lawrence, Kansas, last summer after seeing the original
25 version several years ago. So, welcome.

26

1 I also want to congratulate my dear friend
2 Congresswoman Katherine McMorris Rogers for the legislation
3 that's been worked on and eventually passed, and I look
4 forward to this conference. I will be in and out today. As
5 part of our responsibilities, we have some international
6 arrangements. We have a delegation from Japan here today,
7 and we are signing in about seven minutes a memorandum of
8 understanding with some of the Indian regulators.

9 So even if I'm not here, rest assured that I will
10 be taking in all of the information that is relayed today,
11 and again appreciate all the effort that's been put into
12 it.

13 John?

14 COMMISSIONER NORRIS: Thanks.

15 (Commissioner Moeller leaves the room.)

16 COMMISSIONER NORRIS: I had to give him license
17 to bolt. It sounds like seven minutes was a legitimate
18 number.

19 (Laughter.)

20 COMMISSIONER NORRIS: Welcome, everybody. This
21 is an exciting opportunity to find a way that we can tap
22 into more of our existing resources, existing dams and
23 conduits and produce clean energy from what we have already
24 out there. So, like what Commissioner Moeller said,
25 congratulations to all who were part of getting this

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1 legislation passed.

2 So I am really interested in your input today and
3 specific ideas about how we can make this work. There is a
4 real commitment here at FERC and amongst all of you to find
5 a way to make this work and tap into these resources.

6 So I hope you will be creative and specific in
7 your ideas today, and in the future, as we develop the
8 opportunities to implement this new positive piece of
9 legislation.

10 So welcome, and look forward to the comments
11 today.

12 MR. KONNERT: Thank you, Commissioners.

13 Well, we are fortunate to have a number of
14 representatives from a cross-section of stakeholder groups
15 who have agreed to sit on our panel here today to help
16 stimulate discussion.

17 I would like to first have them introduce
18 themselves, as well as our FERC staff that's up here at the
19 table. We can begin with me. My name is Tim Konnert, and I
20 am the Chief of the Midwest Branch in our Division of
21 Hydropower Licensing here at FERC.

22 John, do you want to take it and then work it
23 around?

24 MR. KATZ: Sure. Thanks, Tim. I am John Katz
25 with the Office of General Counsel.

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1 MS. MILES: Ann Miles, Deputy Director, Office of
2 Energy Projects.

3 MR. FITZGERALD: Brian Fitzgerald, Vermont Agency
4 of Natural Resources.

5 MS. HARRIS: Melanie Harris, National Hydropower
6 Program Coordinator at NOAA Fisheries.

7 MS. HILL-NELSON: Sarah Hill-Nelson,
8 owner/operator with the Bowersock Mills and Power Company.

9 MR. JONES: Kyle Jones. I'm with the Army Corps
10 of Engineers in Headquarters here in Washington. I'd also
11 like to introduce Amy Klein, who is sitting out with you,
12 and as our 404 expert.

13 MR. LISSNER: Dan Lissner. I'm the General
14 Counsel of Free Flow Power Corporation.

15 MR. MAYNARD: Chris Maynard with Washington State
16 Department of Ecology.

17 MR. SEEBACH: John Seebach with American Rivers.

18 MR. WARNER: And I'm John Warner, U.S. Fish &
19 Wildlife Service. I work out of our New England Field
20 Office.

21 MR. KONNERT: Great. Thanks again for being
22 here.

23 One quick check with the phone line. Corey, are
24 the people who are on the phone, can they hear what we are
25 saying right now?

26

1 OPERATOR COREY: Yes. Everything that you say,
2 they can hear.

3 MR. KONNERT: Great.; Thank you.

4 All right, well before I begin our brief
5 presentation I would like to first go over some of the
6 ground rules for the workshop, which are very simple:

7 When speaking, please be sure to use a microphone
8 for the benefit of not only the Court Reporter but also for
9 those listening over the phone and through the webcast.

10 For those of you in the audience, please use the
11 microphone that's located up here in the front, and state
12 your name and affiliation when doing so. If you do have a
13 business card, it would be helpful to the Court Reporter if
14 you could provide it to her if you're going to be speaking
15 today at some point just so she can attribute your remarks
16 accurately.

17 For those of us at the table, you already did a
18 great job in terms of just making sure you turn on your
19 microphone when speaking, and try to turn it off when you're
20 not, to cut down on the background noise. Because we do
21 have our name tents, we don't need to state our name and
22 affiliation before we speak every time.

23 For those of you that are listening over the
24 phone, you will have a chance to participate at specific
25 periods within the discussion. So if you do have a question
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1 or a comment, please let the operator know so that they can
2 queue you up at the appropriate time.

3 Finally, I would just like to remind everyone
4 that we are here to have a programmatic-level discussion, so
5 please avoid discussing the merits of specific projects.

6 (A PowerPoint presentation follows:)

7 So as a primer for our discussion, I am going to
8 now give a brief presentation on an overview of what is
9 required by Section 6 of the Hydropower Regulatory
10 Efficiency Act, the basic steps in our licensing processes,
11 and some of the federal statutes that can affect the length
12 of time to complete them; some of the factors that are known
13 to lengthen process times and actions that can be taken to
14 minimize or avoid them; and the process times for recent
15 projects that the Commission has authorized at non-powered
16 dams.

17 Now Congress enacted the Hydropower Regulatory
18 Efficiency Act of 2013 on August 9th of this year. Section
19 6 of the Act requires the Commission to investigate the
20 feasibility of a two-year process of authorize hydropower
21 development at non-powered dams and closed-loop pumped
22 storage projects.

23 As specified by the Act, the two-year period
24 would include the time to complete any pre-filing and
25 post-filing requirements. The Act specifically requires us
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1 to:

2 Conduct today's initial workshop to solicit input
3 on how to implement a two-year process.

4 Develop and implement pilot projects to test a
5 two-year process.

6 Conduct a final workshop to solicit input on the
7 effectiveness of each tested two-year process.

8 And then submit a report to Congress that
9 describes the outcomes of the pilot projects, comments
10 received from the public, new policies and regulations
11 necessary for the two-year process or, if a two-year process
12 is found to not be practicable, the process--legal,
13 environmental, economic, and other issues--that justify such
14 a determination.

15 Now if the Commission is unable to implement the
16 pilot projects because it determines that a two-year process
17 is not practicable, the Act requires us to submit a report
18 to Congress by April 6, 2014.

19 So any two-year process would include steps in
20 both the pre-filing and post-filing stages. To help inform
21 our discussion on what a two-year process would look like, I
22 am going to walk us through our basic licensing steps for
23 each of these stages, which are similar for all three of our
24 current licensing processes: the ILP, or Integrated
25 Licensing Process; the TLP, or Traditional Licensing

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1 Process; and the Alternative Licensing Process, or ALP.

2 The pre-filing stage begins with the filing of a
3 Notice of Intent, or NOI, and a Preliminary Application
4 Document, or PAD, for licenses; and an Initial Consultation
5 Document, ICD, for exemptions, both of which contain
6 existing relevant and reasonably available information on
7 the project proposal. With the ILP being our default
8 process, this is the time in the process where applicants
9 have an opportunity to request to use one of our other two
10 processes, the TLP or ALP.

11 Consultation then occurs with the agencies,
12 Indian Tribes, NGOs, and other stakeholder groups to
13 identify any issues associated with the project proposal and
14 need for additional studies to address baseline information
15 gaps and evaluate potential project effects. While the ILP
16 and ALP do incorporate our NEPA scoping into the pre-filing
17 stage--NEPA filing is in the post-filing stage for our TLP.

18 The applicant then conducts the appropriate
19 information gathering, which may include studies,
20 synthesizes the results, and begins preparation of the
21 license application. When preparing the license
22 application, the applicant distributes the draft application
23 for comment and addresses any comments received on the draft
24 in a final application.

25 Now the post-filing stage begins with the filing
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1 of that final application, after which the Commission
2 solicits comments, interventions, prescriptions, and terms
3 and conditions.

4 If the application does not have a sufficient
5 level of information required by the Commission's
6 regulations, the comments, prescriptions, and terms and
7 conditions would be solicited after the needed information
8 is provided, which of course can result in a longer process
9 time.

10 This is also where the NEPA scoping occurs in the
11 TLP. Once there is adequate information and formal comments
12 have been received, Commission staff then prepares an
13 environmental document to be issued for comment, which could
14 either be an environmental assessment or an environmental
15 impact statement. After receiving comments on the
16 environmental document, the Commission would then issue its
17 decision on licensing.

18 So in determining whether a two-year process is
19 feasible and, if so, what it would look like, it is
20 important to note that there are a number of statutory
21 requirements that may affect the length of the licensing
22 process that cannot be waived by the Commission.

23 Several of these requirements are within the
24 Federal Power Act. These include:

25 Section 9(a)(1) which requires license
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1 applications to include maps, plans, specifications, and
2 estimates of cost for a full understanding of a project;

3 Section 10(a) which requires the Commission to
4 solicit recommended terms and conditions from resource
5 agencies, both state, federal, and Indian Tribes, for
6 consideration;

7 Sections 4(e), 18, and 30(c), which require
8 Commission licenses to include mandatory conditions provided
9 by the appropriate state and federal agencies;

10 And Section 10(j) which requires the Commission
11 to address the need for fish and wildlife recommendations
12 made by state and federal agencies.

13 Now there are other applicable federal statutes
14 that also may affect the length of our licensing process,
15 and these are listed in this slide. They include:

16 The National Environmental Policy Act;
17 Section 401(a)(1) of the Clean Water Act;
18 Section 7 of the Endangered Species Act;
19 Section 106 of the National Historic Preservation
20 Act;

21 The Coastal Zone Management Act; and
22 The Magnuson-Stevens Fishery and Conservation
23 Management Act.

24 There are a number of factors that have the
25 potential to lengthen the process time. These include:

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1 The need to conduct time-consuming studies and
2 information gathering in preparation of a license
3 application; the need to address deficiencies and additional
4 information requests after a license application is filed;
5 issues that arise later in the process that require new or
6 additional information; and delays in receiving other needed
7 authorizations, including state water quality certifications
8 and ESA consultations.

9 Now although the duration of process times can
10 largely be dependent on the details of the proposed project
11 and the existing resources that would be affected by it,
12 there are several actions that can be taken to shorten these
13 process times.

14 The first is in the site selection by the
15 developer. The process can be much smoother for projects
16 that don't alter existing water flow, are located where
17 there is minimal potential to affect threatened or
18 endangered species, and are located where there is readily
19 available information on existing environmental resources
20 and project effects.

21 In pre-filing, developers have the ability to
22 begin coordination and consultation with agencies and
23 stakeholders prior to the filing of the NOI and PAD to allow
24 them to resolve issues and begin collecting any needed
25 additional information earlier in the process.

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1 When filing their NOI and PAD, developers should
2 make sure to provide as much detail as possible on the
3 project proposal and the existing information--environmental
4 information to help inform consultation and avoid issues
5 later in the process.

6 At the Commission, we provide templates and
7 checklists on our website to help developers navigate the
8 process more efficiently. We also conduct comprehensive
9 reviews of draft license applications to try to ensure that
10 the final license applications are complete when they're
11 filed. However, it is important to note that the
12 responsibility to ensure that the final license applications
13 are complete does ultimately fall upon the developer.

14 There are also several actions that the
15 Commission has the ability to take to shorten the process
16 time of the post-filing stage. These actions have been
17 taken for projects where there is a sufficient level of
18 available information, appropriate consultation has been
19 done, and there is an expectation of limited issues and
20 environmental impacts. These actions include:

21 Waiting scoping;

22 Combining our notices;

23 Shortening deadlines for filing comments,
24 interventions, or terms and conditions;

25 Issuing single EAs instead of draft and final
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1 EAs;

2 And, in some cases, issuing EAs and license
3 orders concurrently.

4 Now to understand the starting point from which a
5 two-year process would be developed, we did look at the
6 process times for recent projects located at non-powered
7 dams that were issued licenses or exemptions since July
8 23rd, 2005.

9 No closed-loop pumped storage projects were used
10 in this evaluation because we did not authorize any during
11 this timeframe.

12 The authorized projects at non-powered dams
13 include 14 projects that were issued licenses, and 12
14 projects that were issued exemptions from licensing. 23 of
15 these 26 applications were prepared using the TLP; 1 was
16 prepared using the ALP; and 2 were prepared using the ILP.

17 When looking at the exemptions and licenses
18 together, the average process times for the pre- and post-
19 filing stages were almost exactly the same at 1.5 years
20 each, for a total average process time of 3 years. Process
21 times ranged from 3.5--approximately 3.5 months to 3.5 years
22 for the pre-filing stage, and 2.5 months to almost 3 years
23 for the post-filing stage. The range of the total process
24 time for each of the projects was approximately 1 to 5
25 years.

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1 When looking at just the 14 licenses, the average
2 processing times for pre- and post-filing stages were 1.6
3 and 1.8 years respectively, with a total average process
4 time of approximately 3.5 years.

5 When looking at just the 12 exemptions, the
6 average processing times for the pre- and post-filing stages
7 were approximately 1.4 and 1.2 years respectively, with a
8 total average process time of approximately 2.5 years.

9 So that concludes my presentation. I'm going to
10 give an opportunity--does anybody in the audience have any
11 questions or comments regarding what I've presented? Just
12 raise your hand.

13 (No response.)

14 MR. KONNERT: Okay, does anybody on the phone?

15 OPERATOR COREY: Yes. Kelly Sackheim, you may
16 ask your question.

17 MS. KELLY SACKHEIM (By Phone): Hello, this is
18 Kelly Sackheim. Can you hear me?

19 MR. KONNERT: Barely. Can you turn it up?

20 MS. KELLY SACKHEIM (By Phone): Okay, I will try
21 to speak a little bit louder. I am not able to obtain a
22 webinar, although I do have your slides in PDF format that
23 I'm able to follow, and I am having a little bit of
24 difficulty. If folks could speaking from the panel could
25 introduce themselves so that we can follow, before we get to
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1 the transcript, that would be very nice.

2 My first comment, or question is: With such a
3 long list of statutory requirements, I think we're on the
4 right track to identify when are the statutory requirements
5 simply a checklist that can be gotten through quickly, or
6 when does the statutory requirement in fact reveal issues?
7 And it is the issues, rather than the, shall we call it,
8 bureaucratic process, that can make it more difficult to get
9 to exemptions or licenses and get whatever development
10 approved.

11 MR. KONNERT: Okay. Thank you.

12 MS. KELLY SACKHEIM (By Phone): Thank you.

13 MR. KONNERT: Go ahead. Do you have anything
14 else to add, Kelly?

15 (No response.)

16 MR. KONNERT: All right. Well do we want to go
17 around the room one more time and introduce, for people that
18 might have missed it? I'm not sure if the people on the
19 phone didn't hear that clearly.

20 MS. KLEIN: I think it's that they can't see the
21 speakers.

22 MR. KONNERT: Oh, who is speaking when they
23 actually speak?

24 MS. KLEIN: Yes.

25 MR. KONNERT: Okay. All right, well then we will
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1 just state our names before we speak then, and change that
2 up.

3 Okay, well moving forward, in the agenda for
4 today's workshop that was included in the Commission's
5 Notice issued on October 8, 2013, we provided a number of
6 questions regarding the feasibility of a two-year process
7 and the factors and criteria for identifying appropriate
8 pilot projects.

9 I will be asking input from select panelists for
10 each of these questions. And in regards to the audience
11 input, those here in attendance and over the phone, you will
12 have an opportunity to provide input after each subtopic of
13 discussion, which in some cases will be a single question;
14 on other cases, may be several questions.

15 We are going to begin with questions regarding
16 the feasibility of a two-year process, and how a two-year
17 process would work. The first question goes to Dan Lissner
18 and Brian Fitzgerald, and it's the most general one of the
19 day.

20 Do you believe that a two-year process is
21 feasible? Dan, do you want to start?

22 MR. LISSNER: Sure. Thank you, Tim. And than
23 you, Brian, and members of the panel. I appreciate the
24 opportunity to be here. Dan Lissner from Free Flow Power.

25 Our view is that a two-year process is absolutely
26

1 feasible. The process should be one that adopts three
2 elements.

3 It should be a process that encourages a
4 proactive approach to resolving key feasibility issues as
5 early as possible in the process.

6 It should be a process that takes advantage of
7 economies of scale wherever practical, both in terms of the
8 development process and in terms of the post-license--the
9 post-filing process.

10 And the process should be one that streamlines
11 the iterative consultation process by encouraging both
12 substantive proposals from developers, as well as engagement
13 by resource agencies and key decision makers on those parts.

14 With cooperation among developers, among resource
15 agencies, and stakeholders, and among the FERC, it is Free
16 Flow Power's view that a two-year process would address many
17 of the challenges in hydropower licensing that have
18 frustrated many stakeholders in the past.

19 I would be happy to provide further specifics
20 later in the presentation.

21 MR. KONNERT: Thanks, Dan. Brian.

22 MR. FITZGERALD: Brian Fitzgerald from the
23 Vermont Agency on Natural Resources. And, yes, a two-year
24 process is feasible, but in our opinion only for projects
25 with minimal natural and cultural resource impacts, and
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1 projects that are I guess I'd say free from controversy.

2 In order to qualify for a two-year process,
3 projects should have to meet rather restrictive criteria to
4 make sure that they do indeed have minimal impacts. And
5 it's possible that a number of projects could be excluded
6 from a two-year process because they don't meet those
7 criteria.

8 In Vermont we have initiated a process with new
9 projects to meet with the developers very early on and try
10 to give them a sense of the important issues that they are
11 likely to have to deal with, so that they know up front
12 whether it makes sense for them to proceed. And that has
13 helped, I believe.

14 Also an important factor in this--and it is one,
15 Tim, that you mentioned--is the necessity of getting a
16 Section 401 Water Quality Certification. And we have to be
17 mindful that under the Clean Water Act the state has a year
18 to act on an application for a certification. And the
19 timing of that state application will have to be timed
20 carefully with the FERC process so that we have the final
21 complete project, and both the state and the Commission are
22 reviewing the same project.

23 MR. KONNERT: Thanks, Brian. All right, we're
24 going to move on to the next question before we open it up
25 to the audience, if you guys have an input.

26

1 This one is for Chris, Sarah, and John Seebach.
2 And this is getting a little bit more specific:

3 What pre-filing process steps do you believe
4 could be eliminated, shortened, or combined? Chris, we'll
5 start with you.

6 MR. MAYNARD: I think the biggest thing with the
7 pre-filing would be, even before that having some sort of
8 really clear agreement with the proponent so that--but not
9 only with the proponent but, at least for us, with Tribes,
10 with all the other stakeholders--so that we know it's not
11 going to be a controversial project, and all of the
12 requirements can be met quickly, or already are met. So
13 some sort of memorandum of agreement.

14 And I think it might be helpful for FERC to have
15 a checklist of things that would need to be in that
16 memorandum for FERC's comfort to meet requirements of FERC.

17 And once that was done, the pre-filing steps kind
18 of--some of them become irrelevant, for us.

19 MR. KONNERT: Like a settlement agreement of
20 sorts.

21 MR. MAYNARD: A settlement agreement, second-year
22 studies.

23 MR. KONNERT: Okay. Sarah?

24 MS. HILL-NELSON: This is Sarah Hill-Nelson with
25 Bowersock Mills and Power Company. I think I would like to
26

1 tail on what Chris said in terms of, I don't know about
2 creating a memorandum of understanding, but we've really
3 worked very hard in the early process to make--we were very
4 clear in communicating with all of the NGOs and the
5 agencies, so when we filed our pre-application document we
6 filed it with letters from all the agencies, and all the
7 NGOs. So that the FERC had a very clear read from the
8 outset of how the project was perceived.

9 And when you put the list up of the ways that the
10 process could be shortened, our project--which was licensed
11 in less than a year--took advantage of all of those. So I
12 think the processes are there to be taken advantage of, and
13 I think if it's made clear that, you know, here are these
14 ways you can shorten it, we recommend these items, that it's
15 feasible.

16 MR. KONNERT: Okay. So it's not as much changing
17 the pre-filing steps as it is kind of front-loading that
18 consultation so that you're ready to go when you begin that
19 pre-filing process.

20 MS. HILL-NELSON: Exactly.

21 MR. KONNERT: Okay. John Seebach.

22 MR. SEEBACH: Thank you. John Seebach from
23 American Rivers. I want to follow on what Sarah said. I
24 agree that the pre-application document is probably the most
25 important pre-filing step. And having that document be

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1 complete and really address the issues that are likely to
2 occur in licensing, and having that completeness involve
3 stakeholder outreach is critical. That really get the
4 licensing off on the right foot and in the right direction.

5 I think that if we're looking at a subset of
6 hydropower projects that are likely to be less
7 controversial, that are likely to have fewer difficult
8 resource issues, that it would be possible for FERC to work
9 with the agencies on a more programmatic basis to identify
10 certain issues that are going to come up, and certain types
11 of studies that are going to be necessary to properly scope
12 and address those issues.

13 And if an applicant comes in with a pre-
14 application document that hits those issues, I think it is
15 likely to greatly accelerate things. In our experience, the
16 study plan development phase can be--in the ILP, can feature
17 a great deal of conflict over what studies people want to
18 do, and what information people think is necessary. And
19 that can shoot through 18 months--did I get that right?
20 That can shoot through a lot of time, I don't think 18
21 months, but coming in with a solid pre=application document
22 that really addresses the issues that are likely to occur I
23 think will eliminate much of the time in pre-filing.

24 MR. KONNERT: Okay. John, do you want to add to
25 that?

26

1 MR. WARNER: Are we responding to both, the first
2 two questions?

3 MR. KONNERT: You can respond to both, if you'd
4 like.

5 MR. WARNER: To start with the first question,
6 following a lot of what Brian stated as far as our view of
7 how there'd probably be restricted types of projects that
8 would--that should qualify for this process, and we would
9 look at it, as Brian noted, you know, as projects with
10 limited resource issues, either no study needs post-PAD, or
11 very limited study needs. And it will get into a lot of the
12 specifics when we get to questions on Section 4.1 and 4.2, I
13 think to look at what some of those items are, but as I
14 respond to other questions we're going to assume that there
15 will be probably a limited scope of those projects that
16 would work, that are two-year projects.

17 So as I identify some short-cut steps in the
18 process, that's assuming that these projects are relatively
19 simple and don't have substantial other issues.

20 One thing--a couple of other things to note, I
21 think that the two-year process, for it to be functional
22 it's only going to work if you work with an applicant that
23 is well-versed in the regulations and understands hydropower
24 impacts to the environment, and is diligent and forthcoming
25 in providing information in the PAD, and is willing to work

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1 cooperatively with the resource agencies and other parties.

2 If--there are a lot of cases right now of some
3 smaller projects that may have lower impacts that are being
4 proposed by folks very unfamiliar with the process, with the
5 regulation, and that causes problems in actually developing
6 a good PAD and a good proposal to work on.

7 Lastly, and this picks up a little bit maybe on
8 what Sarah raised, is we're not a hundred percent sure that
9 you actually need a whole new process in order to expedite
10 licensing. A lot of what folks have mentioned already
11 involves a lot of pre-consultation prior to PAD filing,
12 working with the agencies, identifying what the issues are
13 early. In those simple project, as some of the data you
14 pointed out, the simpler projects and exemptions, you know,
15 we have a lot of projects that go through the TLP right now
16 that can licenses within, you know, around the two-year time
17 span.

18 And looking at--moving to some specifics for
19 Question 3.2, we tried to look at the process and come up
20 with some places we thought had a little bit of room, wiggle
21 room, because the Commission asked for specifics, so we
22 tried to come up with some. So options that may be
23 workable, assuming that's a limited, you know, universe of
24 projects in overall impact, would be reducing the time
25 between the PAD and the conducting of the Joint Agency

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1 meeting from 90 to 60 days; reducing the period for
2 commenting on a draft license or exemption, a PLP, to
3 potentially be reduced from 90 to 60 days.

4 I don't think there's any agency responses that
5 could be shorter than 60 days that are currently in some
6 parts of the licensing process, just from our--just the
7 process time I know that we have in Interior.

8 FERC could shorten the period of time to meet and
9 resolve disagreements, the dispute resolution process,
10 assuming again that we're looking at projects that are
11 unlikely to actually reach that point with a large dispute.

12 However, you know, even by reducing these pieces
13 of this--of the process, the issue of studies is sort of a
14 critical issue. And in order to meet a two-year timeframe,
15 a project really can't have substantial studies. And even
16 if any--at least in the North, any studies that are
17 necessary that are field studies, the application would
18 actually have to be filed sometime in the fall. So
19 decisions on study needs could happen in the late winter.
20 So a study plan could be developed and the study conducted
21 in the summer, and then the application filed a year from
22 the PAD.

23 If an application is filed late, you know, after
24 the first of the year, you couldn't actually get through
25 that study process and get an application filed a year after
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1 the PAD. And as Brian noted, there's a problem in
2 shortening the post-filing period below, shorter than a
3 year.

4 MR. KONNERT: Okay. Thanks, John. I don't know
5 who had their name tent up first. Melanie, do you want to
6 go next?

7 MS. HARRIS: Melanie Harris, NOAA Fisheries.
8 Building on what others have said, we do think that a two-
9 year process could be feasible for certain circumstances,
10 certain kinds of projects. It would certainly require a lot
11 of cooperation both among those of us here designing the
12 process, and also on individual projects, making sure
13 everyone is a good player.

14 I think--some of this we've touched on--the
15 process will need to be standardized and really front-loaded
16 in order to make this happen. We talked about maybe having
17 things--you know, very front-loaded in the process, having
18 the PAD come in with standard information needs so we can
19 identify what standard information needs are for certain
20 types of projects; having standard studies that the PAD
21 could come in already agreeing to complete those studies,
22 identifying those information needs; that would certainly
23 help expedite the process.

24 I think also having a standard checklist to
25 determine project eligibility so we know up front, you know,
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1 which projects are coming in, their criteria are already
2 met, would make a lot of the back-and-forth more
3 streamlined.

4 Specifically on pre-filing process steps, I think
5 if we're talking about the specific kinds of projects,
6 hopefully scoping could be shortened. If we come in and the
7 projects are straightforward, minimal impacts,
8 noncontroversial projects, the scoping period could probably
9 be shortened in the pre-filing stage.

10 And in thinking about the study process,
11 certainly the study process does take up a substantial
12 amount of time in the current ILP. I think that goes a long
13 way if the PAD comes in already agreeing upon the
14 information needs in the studies that will be done, that
15 will go a long way to making sure that all the parties have
16 the information they need to proceed and can help expedite
17 that portion of the process. So hopefully you can avoid
18 steps like the dispute process and other formal steps in the
19 current study process in the pre-filing stage.

20 And one other thought, if there is a disagreement
21 over the proposed studies, or need for studies, I think that
22 might be a sign that would kick it back to the Standard ILP
23 where there's more time for those kinds of steps to occur.

24 MR. KONNERT: Thanks, Melanie. Dan.

25 MR. LISSNER: Thank you, Tim. Dan Lissner from

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1 Free Flow Power. And I assure you, I will not chime in
2 after every question, but I appreciate the opportunity to
3 provide two specifics in connection with this one.

4 I would share two observations on aspects in the
5 process that could be abbreviated, or that has a significant
6 potential to alter the timelines that are feasible under
7 this, the first being the question of seeking FERC approval
8 in order to elect to utilize the TLP or the ALP as opposed
9 to the default process the ILP.

10 I would recommend that the Commission consider
11 whether that decision to elect the TLP or the ILP could be
12 one that could be made electively at that phase without
13 requiring the added period of time to wait for approval in
14 delaying the Joint Agency meeting.

15 Given that the--in our experience, we've found in
16 many situations the TLP to be a preferred process, both by
17 the developer and often by stakeholders, because the
18 flexibility without the rigid process can often be adapted
19 to address the critical issues of resource agency concern
20 early in the process. Requesting TLP has substantially been
21 Free Flow Power's default request. It's consistent with the
22 number of projects that have been licensed in this realm,
23 and giving the election at that point rather than an
24 application and approval could significantly shorten that
25 period of time and get to the Joint Agency meeting faster,
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1 which we've found to be often a very productive activity of
2 engagement with stakeholders that takes place at the Joint
3 Agency meeting.

4 The second point is an observation echoed by
5 others on the panel here, in particular John. The most time
6 and cost incentive aspects of the pre-filing steps is
7 whether extensive studies are required to establish baseline
8 environmental conditions.

9 It has such a significant effect on the ability
10 to execute a development application in the time period
11 prescribed, that Free Flow Power has incorporated into its
12 standard development approach even under the TLP a process
13 of preparing a Plan Studies Document so as to try to
14 ascertain earlier whether extensive environmental studies
15 are going to be required during the pre-filing stage.

16 As a sidebar, I'll comment that development of a
17 template-plan studies document may be a productive tool to
18 expedite this phase under FERC's governance and consultation
19 with stakeholders. We have found it to be an extremely
20 useful element to eliciting participation and discussion
21 about this critical issue in the process.

22 The reality of developing new hydro on existing
23 dams projects is that the requirement of conducting
24 extensive pre-filing studies is extremely challenging from a
25 project finance perspective. In many situations, it's

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1 necessary to ascertain the existing condition, but to the
2 extent pre-filing studies are required, that largely renders
3 the effort conducted during the PAD phase to characterize
4 the environment inconsequential, if it needs to be then
5 validated in the field. And, significantly, you will see
6 developers encouraging the utilization of post-license pre-
7 construction, or even post-construction studies. And I'll
8 offer from our perspective this is by no means an effort to
9 circumvent the need to develop this information, or to
10 short-cut the process. It's the reality of the fact that
11 financing pre-filing expensive and time-intensive study
12 efforts is very challenging. And on the other side of a
13 FERC license it's a different opportunity for sourcing the
14 funds that go into the field work that's often requested by
15 stakeholders.

16 MR. KONNERT: John, did you have something more
17 to say on that?

18 MR. WARNER: I just had a question for Dan. I'm
19 trying to understand the point on approval of a two-year
20 process. Were you suggesting that FERC would--that an
21 applicant would just elect to go that path, and FERC would
22 not rule on it? Or--I'm trying to understand, because given
23 that's what we're talking about, I may be, you know, folks
24 will shoot for the two-year process, and then how do you
25 stop that?

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1 MR. LISSNER: I think that's a great question,
2 John, and if I could articulate a proposal it would be: I
3 agree that the two-year process does not necessarily need
4 its own process and acronym. I would recommend that the TLP
5 is likely to be the process that all parties would prefer to
6 pursue in this context, and I would recommend, speaking from
7 our development experience, that making the TLP a
8 permissible election by developers in connection with new
9 hydro in existing dams would be preferred, from Free Flow
10 Power's perspective.

11 MR. KONNERT: Okay, thank you. Moving on to the
12 next question, this one is for Dan, John Warner, and Melanie
13 Harris. And this is similar to the last one:

14 What post-filing process steps do you believe
15 could be eliminated, shortened, or combined? Dan, do you
16 want to start off?

17 MR. LISSNER: Sure. Thank you, Tim.

18 The length of time it takes to get a license
19 after a license application is submitted is a major
20 impediment to the development of projects at existing dams.
21 The time that is spent in multiple rounds of additional
22 information requests, multiple scoping documents, delays in
23 environmental assessments or environmental impact statements
24 is largely viewed as lost time, from a development
25 perspective.

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1 I say all this, recognizing that it's far from
2 "lost time" on FERC's end; that there's substantial work
3 that goes into the process by FERC during this period of
4 time; that FERC staff are hard working, they're capable,
5 they're dedicated, and I would recommend that in order to
6 make a two-year process feasible I think FERC needs the
7 resources necessary in order to advance projects in a timely
8 fashion through the post-filing stage. And there needs to
9 be a clear mandate that good projects, environmentally
10 compatible projects, should be licensed in an effort to
11 invest the resources in advancing those projects rather than
12 other, more controversial projects.

13 I think it is clear that there is a legislative
14 mandate that new hydro on existing dams are the types of
15 hydropower projects that should be--that should be
16 encouraged. So we would encourage, in line with that
17 mandate that FERC receive an appropriate and all available
18 resources necessary to move expeditiously through those
19 post-licensing steps.

20 MR. KONNERT: Thanks, Dan. John.

21 MR. WARNER: Yes. As I mentioned earlier, and
22 Brian mentioned, I think one of the challenges here beyond,
23 beyond the conceptual idea of things that would make the
24 process move faster with a simpler project and better
25 consultation and a document that's filed that's clean, is

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1 that you can't get past the one-year filing issue relative
2 to Section 401 Water Quality Cert.

3 I do agree with Dan, and a number of us have
4 discussed that, that whether you need a new process or not,
5 that the basis really needs to be the TLP. And without
6 getting into the specifics there, the TLP has--using the TLP
7 has the--provides the flexibility to get a relatively
8 straightforward project filed at FERC relatively quickly,
9 but the TLP has no requirements on FERC's process time, not
10 as rigid as the ILP.

11 And so to some extent, adjusting the TLP to
12 address some of Dan's concerns as far as just the process
13 time once filed can just delay things that have no other
14 reason than workload, you know, might allow a license to be
15 expedited, whether or not you have a new process or you're
16 just using a TLP and trying to be more aggressive.

17 Of course I say that, and later we'll probably
18 raise the issue that our workload from an agency standpoint
19 is pretty difficult, and anything that shortens timeframes
20 for FERC probably has the same impact as it does to us.

21 MR. KONNERT: Melanie.

22 MS. HARRIS: Melanie Harris, NOAA Fisheries.

23 So I think whichever process we're talking about,
24 whether it's the TLP or the ILP, I think we will need much
25 shorter turnaround times from FERC on FERC review of

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1 documents and NPEA production periods I think will be key.

2 Simply looking at the ILP, I think your
3 production of an EA in a quicker timeframe, getting the REA
4 notice out quicker, and license issuance will be necessary
5 to help cut out some of the steps to get down to a two-year
6 process.

7 One other thing I wanted to point out in the
8 post-filing, so there's a presumption that things will go
9 smoothly--and we certainly hope that they would on
10 individual projects--but we did want to note, if the EPACs,
11 the Energy Policy Act trial-type hearing, or alternative
12 processes are invoked, that we would be compelled to apply
13 those, and that would likely push a project out of the two-
14 year licensing timeframe.

15 So those processes as mandated by Congress were
16 developed around the ILP and into the current ILP process.
17 So I just wanted to make a note of that.

18 MR. KONNERT: Okay. Thanks. One more question
19 and then we'll open it up to the audience and those on the
20 phone. And this is for all panelists. You don't all need
21 to speak to this, but we'll see who has input.

22 In a two-year process, how much time do you
23 believe should be allotted to the pre-filing stage versus
24 the post-filing stage? Does anybody want to comment on
25 that? Sarah?

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1 MS. HILL-NELSON: This is Sarah Hill-Nelson with
2 Bowersock. I think if they were in a two-year process, we
3 could see the pattern of about, it's usually about 50-50.
4 So I think, you know, if you could scope a general to expect
5 a year pre and a year post, then I think that would be
6 reasonable.

7 I think one of the things that I was hearing Dan
8 talk about is this idea that, yes, you could do this
9 feasibly with the TLP, but that we might think about with
10 this process, if people could start out on a fast track with
11 those expectations that you would have a two-year process of
12 a year prior and a year post. And then if there are things
13 that emerge that make it look like it couldn't stay on the
14 fast track, they could then essentially off-ramp off that in
15 terms of timeframe.

16 MR. KONNERT: Does anybody else have any input
17 regarding this one? John.

18 MR. SEEBACH: So I noticed from looking at some
19 of the numbers--sorry, this is John Seebach from American
20 Rivers--from looking at some of the numbers in your
21 presentation, the pre- and post-filing is as few as .2
22 years. So I agree that 50-50 could work.

23 I think it might actually be possible to get the
24 post-licensing down to less than that. And obviously
25 that's--I'm not going to tell FERC how to do their job, but
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1 if that's something that you are able to do, I think that
2 would leave more time for developing a high-quality
3 application that addresses the issues. And that those
4 applications ought to be applications I would think that
5 would be processed faster.

6 So in the spirit of measure twice, cut once, make
7 sure there's enough time to develop a quality application.
8 And to the extent you can shave time off post-filing the
9 quality application, I think that that would be preferable.

10 MR. KONNERT: Okay. All right, thank you.

11 Well does anyone in the audience have any
12 thoughts on the previous questions?

13 OPERATOR COREY: Again, if you would like to make
14 a comment or ask a question, you may press star-one and
15 record your name at this time. One moment, please.

16 MR. KONNERT: We're going to wait, or hold off
17 for input from the phone for now. I'm just going to ask for
18 people in the audience here in attendance. If you do have a
19 question or comment, feel free to go up to the microphone.

20 Yes, just state your name and affiliation.

21 MR. LEAHEY: Jeff Leahey with the National
22 Hydropower Association.

23 So, yes, we certainly believe that a two-year
24 process for these types of projects is feasible. And as was
25 mentioned, I think we saw that Congress was sending a clear
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1 signal to all of us--FERC, the agencies, the industry,
2 stakeholders--that the licensing process for these
3 categories of projects, building on existing infrastructure,
4 non-powered dams, closed-loop pumped storage, should be more
5 tailored to their impacts. And that by definition they are
6 lower impact projects, particularly if you look at building
7 on existing non-powered dams.

8 The dams are already in place and you're adding
9 generation to them. So in that respect, we're looking at
10 existing infrastructure. We have projects in areas, in
11 which case we might have a lot of existing information, and
12 we have what are potentially for the most part probably
13 lower impact projects.

14 So I think what I would encourage all of us to
15 think about is, and I think the discussion you heard has
16 been really good about looking at the existing processes and
17 where we can make cuts or changes, but also to have sort of
18 a paradigm shift about how we look at licensing of these
19 particular types of projects, and do some out-of-the-box
20 thinking. And what is the information that is really needed
21 for either FERC, the resource agencies, or stakeholders, to
22 make decisions or to make comments on the types of projects
23 that we're talking about here.

24 At the end of the day, what NHA would like to see
25 is a reduction in the redundancies in the project, in the
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1 process; more timeliness of approvals; and a better scope
2 and nexus of the process itself to the impacts of these
3 projects, which we believe are in the general scope of hydro
4 development, the lower-impact projects.

5 Thank you.

6 MR. KONNERT: Does anybody on the phone have any
7 questions or comments regarding the previous questions?

8 OPERATOR COREY: We're not showing any questions
9 at this time.

10 MR. KONNERT: Okay, thank you.

11 Well the next question is for Chris, Melanie,
12 John Warner, and Brian.

13 What, if any, process modifications are needed to
14 account for mandatory conditions and other agency
15 authorizations, such as Sections 4(e) and 18 of the Federal
16 Power Act, 401 Certifications, and ESA consultations? And
17 then as a follow-up to that, what about fish and wildlife
18 recommendations made under Section 10(j) of the Federal
19 Power Act?

20 Chris, do you want to start?

21 MR. MAYNARD: Sure. Chris Maynard. We mainly
22 need enough time to--well, there's one, the 401 Water
23 Quality Certification, which people have within a year
24 between the application and between when the agency needs to
25 issue a 401--that's within a year. It could be less. And

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1 that might be able to be shortened if we have enough, if we
2 have enough information up front and agreement up front that
3 this is a project that we think is a good project and is not
4 going to--it's not going to conflict with any water quality
5 laws or what quantity.

6 The bigger part for us is water rights. And that
7 for us takes a long time. So that would be--we would be
8 pushed to get water rights out in time.

9 And another thing that FERC would need to look
10 into is each state has, under 401, under the Clean Water
11 Act, they have state rules that they develop for public
12 notification, and there's a certain timeline associated with
13 those state rules. And each state is different. I don't
14 even know what they are for each state.

15 That's all for now.

16 MR. KONNERT: Okay. Melanie.

17 MS. HARRIS: Melanie Harris, NOAA Fisheries. I
18 don't know that we have any process modifications in mind.
19 I think the main point is that we still need to allow time
20 in the process for filing Section 18s and 10(j)
21 recommendations.

22 And again, as I mentioned earlier, I think the
23 process will be expedited when we have the information that
24 we need. So having standard studies that are determined up
25 front and agreed to up front I think will really help move
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1 our process along, move the whole licensing process along.

2 Any ESA issues would probably likely render
3 projects not suitable for this two-year process. I don't
4 want to rule them out off the bat, but it would likely be
5 projects that are more controversial, have more complex
6 issues that might be difficult to include through this two-
7 year timeline, but it could be done if the process was--you
8 know, if the information was really front-loaded.

9 And I think a two-year process should be limited
10 to projects where there are no controversies--controversies
11 are less likely and disputes are unlikely. And just what I
12 mentioned before about, you know, if the EPAC processes are
13 invoked, then that would certainly add more time to the
14 process. Hopefully that wouldn't be the case, but you would
15 need to make sure that if that did come up that would, you
16 know, take the process out of the two-year timeline.

17 MR. KONNERT: John.

18 MR. WARNER: Following up on what Melanie said, I
19 think relative to that, fishway prescriptions, the way we
20 look at it was that if I make the assumption that the two-
21 year process is petitioned for and approved by FERC ahead of
22 time, then you would anticipate that there would be criteria
23 established for what qualifies and what don't.

24 And this goes for trial-type hearings, and it
25 goes for ESA consultation as well, you know, the agencies

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1 aren't going to give up their authority under the various
2 acts to issue a fishway prescription, or raise a native
3 species issue post-filing, but if the pre-filing PAD
4 included sufficient information to identify that a fishway
5 prescription is unnecessary, or they've already worked out
6 between the applicant and the fishery agencies the type of
7 fish passage that is agreed to, then you could eliminate the
8 expectation for a trial-type hearing.

9 And it would seem like you'd want to--if you're
10 going to start a two-year process, that you don't want to go
11 in it with complete uncertainty relative to either
12 endangered species or prescriptions.

13 So it sort of gets to, in both cases it gets at
14 pre-filing consultation between the applicant and the
15 agencies involved, and have part of the PAD and the request
16 for the two-year process to include that consultation. And
17 at least to the extent that the agencies can, and the
18 applicants can convey it as there's no expectation that
19 we're going to have an endangered species adverse effect
20 issue, or we're going to have a fishway prescription that's
21 going to be either there'll be no fishway prescription or
22 there'll be no contest because the application or the PAD
23 identifies are agreed to.

24 And I think, you know, short of that, if there is
25 a process then it's going to need to ramp off any time those
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1 issues get raised. And I think it would be better to have a
2 process that at the beginning of the process an applicant
3 gets an approval from FERC for a two-year license, and they
4 can expect a two-year license, and not have it that they
5 file, they anticipate a two-year license, and then we
6 struggle with this off-ramp, you know, where the agencies or
7 FERC are under some pressure to maintain the two-year
8 timeline, you know, in the fact of these issues being
9 raised.

10 So I think it would be best that they front-load
11 as much information as possible for both those, and sort of
12 clear that, try to get that as a clear sort of provision up
13 front in the request for the process.

14 MR. KONNERT: Thanks, John. Brian.

15 MR. FITZGERALD: Brian Fitzgerald of Vermont
16 Agency of Natural Resources.

17 With respect to 401 Certifications for projects,
18 to sort of echo what Chris said earlier, for projects that
19 are truly low-impact, and where we have a complete
20 application, it is possible to work through the 401
21 Certification process in less than the year provided by the
22 Clean Water Act.

23 The key there is having a complete application
24 that has all of the information the state agency needs to
25 issue findings that support the certification. And in the
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1 case of Vermont, at least, the one-year clock starts running
2 when we get the initial application. And it may take a
3 period of months to get the--to get the complete information
4 we need.

5 So to some extent, it depends on the quality of
6 the application in terms of the timeframe for 401. And as
7 we said earlier, there is a--you know, it is important to
8 consider that in terms of allocating time to pre- and post-
9 filing timeframes.

10 One other thing I will note, although this is
11 isn't an issue that our agency deals with, another
12 consideration in terms of timing and process is consultation
13 under Section 106 of the National Historic Preservation Act,
14 which is important. And in consultation with the State
15 Historic Preservation Office, and particularly projects in
16 Vermont and also in New England where the proposal is to
17 redevelop a whole dam, there is a lot of historical or
18 cultural resource, archeological resources associated with
19 these developments that I think the state agencies may want
20 to look at pretty closely.

21 MR. KONNERT: Thank you. John, did you want to
22 speak up on that issue. I'm sorry--

23 MR. KATZ: Commissioner Norris wanted to say
24 something.

25 MR. KONNERT: Oh, I'm sorry. I couldn't tell if
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1 you were looking at me, sorry.

2 COMMISSIONER NORRIS: Tim, this is a bit one-off,
3 and I'm not quite sure where it fits on the agenda--this is
4 for you, Mr. Jones, regarding the Army Corps. It is a one-
5 off from your licensing process for hydropower licensing
6 facilities. It is my understanding that the Army Corps
7 waits until FERC issues its license before commencing your
8 Section 408 review. Is that correct? And is there a way to
9 mitigate that delay before beginning the process in some
10 parallel fashion?

11 MR. JONES: It's my understanding that we work
12 with the developers from the very beginning when they first
13 come to us. And our process takes as long as it takes to
14 get all the material together, the design and such. So you
15 know, we do work from the very beginning, so it just depends
16 on how long the process takes. I'm not sure I'm answering
17 your question, but you may want to come at me again on it.

18 COMMISSIONER NORRIS: Yes. My understanding is
19 that you don't begin your 408 review until after FERC issues
20 its license. So if we did find that two-year licensing
21 process here but the Army Corps didn't wait to start their
22 Section 408 review until that was complete, that adds
23 additional time to moving a hydro project forward, is there
24 a way to--is that correct? I mean, do you know when you
25 actually commence the 408 review? Is it before FERC issues
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1 the license or not? And is there a way to run those more in
2 parallel so you can start the 408 review before FERC
3 actually makes a determination on the license?

4 MR. JONES: I'm probably not as familiar with
5 that as maybe you are, but it's my understanding that when a
6 developer comes in we work with that developer throughout
7 the process, and at whatever point we get to, they have a
8 certain--they have a document, or a group of documents that
9 we can finalize our review, we do that.

10 Normally, as I understand it, the 408 approval is
11 granted after the license is approved by FERC. It doesn't
12 necessarily have to happen that way, but--I'm afraid I'm not
13 answering your question.

14 The thing I'm--what I'm trying to say is, we work
15 all along. It's sort of a process that starts and
16 continues. It's not like we wait until everything's
17 together and then review. We work with the developer from
18 the very beginning from when they first come with us. But
19 normally it's the approval which is granted by Headquarters
20 that doesn't come along until after the license is granted.

21 Daniel, you may have--

22 MR. LISSNER: Sure. Thank you, Kyle. And thank
23 you, Commissioner Norris. I can only speak to our
24 experience in working with the Corps both at Headquarters
25 and in a number of district levels, but I acknowledge that

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1 that experience is extensive.

2 Many of the projects that Free Flow Power is
3 developing, and indeed many of the new hydro-on-existing-
4 dams projects that are being proposed now are proposed to be
5 developed at existing Army Corps' facilities that are
6 maintained for other purposes.

7 I think what we have observed is actually a very
8 high degree of cooperation between the Corps and developers
9 in extremely early phases in the process, starting with
10 comments on preliminary permits, continuing through comments
11 on every document that we put at them, which are voluminous
12 and extensive. And a significant onus of that is on the
13 developer. I think it would, frankly, be pretty crazy to
14 run very far down the road on the licensing process without
15 checking with the dam owner who has specific facility
16 mandates to figure out whether what you're proposing is
17 consistent with their operation of the facility and with
18 their processes.

19 Commissioner Norris, in my experience you are
20 correct that the formal 408 process does not commence--I may
21 be fudging the term somewhat, but doesn't commence until
22 after the FERC license. But what we have seen is an
23 extensive amount of pre-filing consultation that in all
24 situations we feel has led to a better license application.

25 I think the MOU between the Corps and the FERC
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1 has been very productive towards that goal. I think there
2 continues to be value in the Corps and FERC working together
3 to refine that MOU and figure out what parts of that have
4 worked well to strive to ensure that FERC's NEPA document
5 answers all of the questions that the Corps must ultimately
6 answer in the 408, including alternatives' analysis; and, to
7 ensure that the demands of providing consultation in each of
8 the steps of the FERC process is consistent with the Corps'
9 workload.

10 One of the aspects in which we're advocating,
11 trying to minimize the number of steps in this process, is
12 because at Corps' facilities the Corps is such an integral
13 stakeholder/regulator/resource agency that it's essential
14 for them to provide comments on a PAD, and comments on a
15 Plan Studies Document, and comments on a draft license
16 application, and participate in the scoping. And that is a
17 tremendous amount of burden on them.

18 So the extent to which this process can enable
19 the Corps to participate substantively and completely as
20 early as possible, and eliminate as many of the iterative or
21 redundant consultations, would absolutely be beneficial.
22 But I've had very positive experience working with the Corps
23 so far under the 408 process with these type of projects.

24 COMMISSIONER NORRIS: Thank you, Tim. Sorry for
25 getting you--

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1 MR. JONES: No, no, I just want to say I
2 appreciate Daniel as a representative of a developer really
3 talking about it. My thing was that we start from the very
4 beginning. We work with the developer. We review the
5 documents provided us. There comes a point at which there's
6 sufficient information for us to put together as a package
7 to submit forward for approval.

8 So thanks, Daniel. I didn't mean to put you on
9 the spot.

10 MR. KONNERT: Sarah, did you want to add
11 something?

12 MS. HILL-NELSON: Well, actually I originally
13 raised my card because I was going to dovetail back to
14 something that John had said.

15 MR. KONNERT: That's fine.

16 MS. HILL-NELSON: So it leads back away from the
17 408. My question for John is, I understood the way people
18 were describing this that they see it as efficient to use
19 the TLP process, but that there might be some way to do a
20 fast-track TLP process, and that you could potentially start
21 out and go through some sort of criteria, or a checklist
22 that you would be considered fast-tracked until, you know,
23 further notice, essentially until something comes up that
24 makes it not feasible.

25 But I heard John saying that he thought that that
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1 was maybe not a good idea. I just wanted some clarification
2 there, that you would need to be guaranteed that you'd have
3 the two-year process, and that you thought off-ramping was
4 not good? Did I--

5 MR. WARNER: No. My comment was that developers
6 may feel that they were guaranteed a two-year process, and
7 that off-ramping might be difficult for the agencies to be
8 pursuing against protestations from the developer that they
9 were granted a two-year process and were, you know, being
10 too aggressive or too--you know, too difficult on them, you
11 know, and they thought they had an opening.

12 So it would be better not to let folks start a
13 two-year process that seemed like it was doomed for failure.

14 MS. HILL-NELSON: Oh, okay. So you would have to
15 have a pretty solid PAD to get approved to be fast-tracked,
16 essentially.;

17 MR. WARNER: That would be our preference,
18 certainly.

19 MS. HILL-NELSON: And you'd have that all front-
20 loaded, and then you could try to use the TLP and be fast-
21 tracked. I mean, I essentially felt like our license got
22 fast-tracked because we did all these things, you know, that
23 people say, oh, you should do this, or it should be a
24 noncontroversial project. And I think it can serve as an
25 example: I had a good licensing professional. You know, I

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1 felt like it got the attention because he could see that,
2 okay, this is going to be a relatively quick turnaround.
3 Let's just get the boxes checked and get it done.

4 And if you could do those noncontroversial
5 processes but know--or projects in that, but know that if
6 something comes up then FERC shouldn't have to feel, you
7 know, to be under the pressure of that deadline if suddenly
8 something comes up and everybody can say, okay, well we
9 recognize this now; we're not going to be able to meet the
10 two-year deadline for these reasons X, Y, and Z.

11 Thank you for that clarification.

12 MR. KONNERT: Thanks, Sarah.

13 Does anybody in the audience have any questions
14 or comments regarding this question?

15 (No response.)

16 MR. KONNERT: Okay, does anybody on the phone
17 have anything to add regarding this question?

18 OPERATOR COREY: Once again, press start then
19 one.

20 (No response.)

21 MR. KONNERT: Is that a "no"?

22 OPERATOR COREY: I think you have a couple of
23 questions.

24 MR. KONNERT: Oh, you do?

25 OPERATOR COREY: Yes.

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1 MR. KONNERT: Okay.

2 OPERATOR COREY: Erin Ragozzi, your line is open.

3 MS. RAGOZZI (By Phone): Hello. I'm with the
4 California State Water Resources Control Board, and I just
5 wanted to echo a few of the comments that I've heard today.

6 I do think it would be possible for
7 noncontroversial projects with limited or no studies that
8 would be necessary. One of those reasons is also because
9 that would allow for less timely compliance with the
10 California Environmental Quality Act, or CEQA. Maybe
11 something such as a negative declaration or an exemption.

12 And I wanted to echo Chris's comment with respect
13 to water rights. I think that that could be a big hurdle
14 with some of these projects. And so if that was something
15 that needed to be done prior to when they came in with the
16 PAD, or as part of a checklist, that would potentially
17 streamline that process.

18 MR. KONNERT: Okay, is there another question
19 from the phone?

20 OPERATOR COREY: Yes. Kelly Sackheim, your line
21 is open.

22 MS. SACKHEIM (By Phone): Thank you very much.
23 This is Kelly Sackheim with K.C. Hydro, a micro developer,
24 as it were. And I think it is important to recognize that
25 all the talk of front-loading, and as Dan mentioned the

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1 concern with when you have to invest a lot of money and
2 resources, and then you have the uncertainty about whether a
3 project is actually going to be viable, and how long it's
4 going to take to actually develop, the FERC preliminary
5 permit becomes very important because it allows a developer
6 to manage maintenance of the priority at a particular site
7 while they are allowing agencies to give the kind of
8 feedback regarding feasibility that, because it doesn't
9 necessarily have a timeline, also may give an opportunity
10 for not having to put the money in first.

11 And I think that the collaborative process and
12 recognition is that, while everybody is working very hard,
13 there are certain types of feedback that the agencies may be
14 able to provide as an assessment of are we going to have
15 issues before the clock starts. And so some of the
16 agencies, talking for example about the Water Quality
17 Certification, the clock starts when an application is
18 complete. If the agencies were able to say, well, we're not
19 even going to start the clock, but we are going to give an
20 assessment of what is probable could be the issues as
21 they're being presented, I think that the concern is not so
22 much to finish a license in two years as have a shorter time
23 frame from when money needs to be invested to actually get
24 through the process and do the detailed studies, and a
25 license will be successful, and granted in a short time
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1 frame.

2 MR. KONNERT: All right. Thank you, Kelly.

3 Jeff, do you want to--do you have a comment?

4 MR. LEAHEY: Jeff Leahey again from the National
5 Hydropower Association. So in response to the discussion of
6 other agency authorities and approvals that are needed in
7 the process, I think there certainly are examples when
8 things have gone very well, and then there are examples of
9 when things have not gone very well, and the coordination
10 isn't there.

11 And I think the issue that we have seen from
12 talking to a variety of people across the industry is when
13 that coordination and adherence to the timelines isn't
14 playing out in the process, when it goes bad it really goes
15 bad. And those are the issues that need to be fixed.

16 So I think for the purposes of why we're here,
17 which is looking at a two-year pilot process specifically
18 for these two categories of projects, is there a way that
19 FERC and any of the agencies, federal or state, can come to
20 some agreements on the ability to participate early and to
21 participate consistently through the process.

22 Because sometimes that is where we see delays.
23 Agencies have not, or FERC, or whoever, has not--
24 stakeholders have not necessarily engaged at a consistent
25 pace throughout the process, and therefore that brings up

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1 additional issues later on in the process that could have
2 been resolved earlier.

3 Also, an agreement to adhere to the deadlines in
4 whatever sort of process we stake out here. If you do get
5 to that point in the beginning where everyone acknowledges
6 that all the information that they have is needed, I think
7 that would be helpful. And to that extent, I think FERC has
8 been working with various states and agencies on the kinds
9 of things that would address that, like the Colorado-FERC
10 MOU. The California-FERC MOU on 401s I think is a step in
11 the right direction.

12 So I think there are some things that agencies
13 and FERC can work on and work off of as examples to inform
14 this process. And I think, again, for the purposes of why
15 we're here--which is to try to get to some pilot projects;
16 we're not necessarily implementing for the moment a whole
17 brand-new process at FERC; we're looking to do a process for
18 pilot projects--is there a way that the agencies can agree
19 and work with FERC on an agreement, sort of, I'm wanting to
20 say "binding agreement," that for the purposes of these
21 pilot projects if X happens, they would agree to respond
22 that Y will happen. Or if FERC agrees if X happens, it will
23 act in this way. Sort of to get some of that certainty in
24 the process, again for the limited purpose of building on
25 these non-powered dams and these closed-loop pumped storage
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1 projects.

2 MR. KONNERT: Okay. Thanks, Jeff. Ann?

3 MS. MILES: Ann Miles, FERC. I think this is one
4 of our biggest challenges, actually, to figure out how we
5 integrate everybody's statutory responsibilities. And it's
6 been that forever in hydro licensing, and most of us in this
7 room have quite a history doing hydro licensing.

8 I think staying focused on, you know, what it
9 needs for the two-year process, I guess I'm looking for more
10 information--not today, but for thinking about the next
11 question deals with MOUs, so we'll be talking about that,
12 talking about information needs, staff resources to do these
13 things. Because if we put this together, I think--I mean,
14 my great hope is that, yes, we all are really going to work
15 hard to make a positive step forward, and that may take some
16 of us to move a little bit out of the ways that we're used
17 to working historically. Because we're talking about a
18 small universe of projects, I'm wondering if we'll be able
19 to do that.

20 I know, you know, we're very typical of asking
21 for information, asking a lot of information, where
22 sometimes it may be that we may not need that information if
23 we've got a typical, a type of project that doesn't.

24 So I guess the thing I'm hoping is that people
25 will, as we try to work through this together, that we think
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1 a little bit outside of the box. I think you said that,
2 Jeff, earlier with how can we make it on those typical
3 things that cause us issues, to sort of lay them on the
4 table and see if we can figure out a way to make it move
5 forward.

6 MR. KONNERT: Okay. All right, we're going to
7 move forward with the next question. This one is for Kyle,
8 Melanie, and Chris Maynard. And that is, as Ann mentioned,
9 could memorandums of understanding between FERC and federal
10 or state agencies help expedite licensing?

11 Kyle, we'll start with you.

12 MR. JONES: I think we agree with that. As you
13 know--this is Kyle Jones with the Corps of Engineers--we've
14 had a Memorandum of Understanding with the Federal Energy
15 Regulatory Commission for quite a few years. The most
16 recent revision to that was March of 2011, which basically
17 lays out our framework of dealing with the non-federal
18 development of hydropower at our projects.

19 That's the only particular partnership agreement
20 I'm familiar with. I would like to, if it's okay, ask Amy
21 Klein if she would like to comment on that. She is more
22 familiar with our regulatory. Because we actually have two
23 deals we deal with. One--thank you very much, Commissioner
24 Norris, for bringing it up--is our 408 process where we get
25 approval for actually modifying one of our structures.

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1 Amy deals with the regulatory program, which has
2 two parts to it, that I'm familiar with. The 404 that is
3 approval as granted, after the 408 is issued, and then
4 within the partnership agreement the MOU, we have at least
5 Section 10 which deals with navigation.

6 So if Amy would like to comment, I would
7 appreciate it if she'd go ahead.

8 MS. KLEIN: Thank you, Kyle. Again, this is Amy
9 Klein with the Corps of Engineers' Regulatory Program at
10 Headquarters. I'll just stand really close--oh, hey,
11 engineer.

12 (Laughter.)

13 MS. KLEIN: What I was about to say was, so the
14 MOU that has been re-issued in 2011 we find provides a very
15 effective framework for getting the Corps of Engineers'
16 Regulatory Program to the table early.

17 Some of the bigger issues hydropower can face is
18 not only alternatives' analysis for NEPA, but also under our
19 Section 404 Clean Water Act where the alternatives we look
20 at can be different.

21 So by us getting to the table early, we can
22 communicate those differences and try to align our
23 alternatives as early in the process as possible to avoid
24 those delays.

25 One of the nice efficiencies of the review for
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1 hydropower is our Section 10 authority is complied with
2 through the FERC's licensing process. It's one of the only
3 times our authority is actually I guess implemented, if you
4 will, by another agency's license process. So that has
5 allowed for efficiency for a number of decades regarding
6 that review.

7 So Regulatory's role is a little bit less than in
8 other projects since we are only look at Section 404, but
9 the MOU really helps us get to that table early and outline
10 the issues we have. So once FERC signs its record of
11 decision for an EIS, we can issue our decision relatively
12 quickly.

13 So I don't know if anyone has any questions on
14 that, but...

15 MR. KONNERT: No, that's great. Thank you.

16 MS. KLEIN: Thank you.

17 MR. KONNERT: Melanie?

18 MS. HARRIS: Melanie Harris, NOAA Fisheries. We
19 do think that MOUs like FERC did with Colorado to develop
20 small hydro would be useful specifically to document
21 agreement on the criteria and presentive standards for
22 project eligibility, and also the information needs during
23 the pilot phase. So we think it could be useful for those
24 purposes.

25 It would also let all the parties know what to
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1 expect during the two-year process and increase
2 communication during the pilot phase. And one way to do
3 this, to get to an agreement on those standards for
4 information needs might be to restart the Interagency Task
5 Force, or an interagency task force like process, to get
6 those interagency discussions going to reach a point where
7 we could document things in the MOU.

8 MR. KONNERT: Okay. All right, Chris.

9 MR. MAYNARD: An MOU, or a settlement agreement,
10 or a MOA, would be helpful for us to make with the parties
11 themselves, all the parties--I mentioned this before--that
12 would be the most essential part.

13 Also, we'd like to see the MOUs for the
14 particular projects with the agency--say it's the Corps--
15 that owns the project so we know that you've worked your
16 differences out. That would be--like for flood control and
17 power, how you're managing that. That would help us look at
18 our regulatory part and understand if we could come up with
19 a 401 Water quality Certification, or do whatever is needed
20 to make the projects go forward in a faster timeline.

21 MR. KONNERT: All right. Thanks, Chris. John?

22 MR. WARNER: This is John Warner, Fish & Wildlife
23 Service. I just had one point on the MOU question. It was
24 unclear what the focus of an MOU might be between the FERC
25 and the agencies.

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1 You know, is it the projects that qualify for the
2 two-year process, is it the study needs? Is it the time for
3 additional information the components that need to be in the
4 PAD? A lot of those, especially, you know, some description
5 of the projects that would qualify, you know, if this is a
6 permanent process, should be in the regs. They shouldn't be
7 in an MOU.

8 So, you know, I wouldn't be opposed to an MOU to
9 address some issues, but certain things need to be in the
10 regs and not in an MOU.

11 MR. KONNERT: Okay. Brian, did you have a
12 comment?

13 MR. FITZGERALD: Yes. Brian Fitzgerald, Vermont
14 Agency of Natural Resources. I am not sure at the state
15 level if a, sort of a general MOU with FERC would be that
16 productive for a couple of reasons.

17 One is, you know, in any given state we might be
18 dealing with a relatively few number of projects, and it
19 does take time and effort and energy to negotiate MOUs. So
20 the payoff might not make that a good investment.

21 And I might note that we had, the State of
22 Vermont did have discussions with FERC staff a year, I think
23 it was about a year ago. We were exploring an MOU between
24 the State and the Commission based to some extent on the MOU
25 that existed with the State of Colorado.

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1 And as John said, you know, a lot of these things
2 are process issues or governed by FERC regulations, and MOUs
3 would not supersede that. So we concluded that an MOU would
4 have little benefit to either the Commission, the State, or
5 the applicant. So we decided to not pursue it.

6 MR. KONNERT: Melanie?

7 MS. HARRIS: Melanie Harris, NOAA Fisheries. I
8 just wanted to clarify that we see the MOU as being useful
9 during the pilot phase of this process. And following on
10 what John was saying, and what Brian was just getting at, I
11 think if this two-year process goes forward we would like to
12 see it done through a formal rulemaking. So I think that
13 might be more useful in this pilot phase.

14 MR. KONNERT: Okay. Thank you. Ann?

15 MS. MILES: Ann Miles, FERC. I don't know what
16 Congress was thinking, either, when they talked about the
17 MOUs, but I'm almost wondering if it was a timing issue,
18 since that's been a challenge I think to work within the
19 timeframes that are either in your individual statutes or
20 within the ILP.

21 I don't know if that's something that you've
22 thought about, the federal and state agencies, whether under
23 certain--you know, if the criteria and the things that were
24 set out, some kind of an agreement that you would be able to
25 work within a specified time frame is something that you'd

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1 consider.

2 I mean, I don't even know what we'd think about
3 it. I'm just putting it on the table.

4 MR. KONNERT: All right, does anybody in the
5 audience here have any comments regarding this question?
6 We've got one.

7 MR. GIBSON: Jim Gibson, HDR Engineering.

8 I think the MOUs are probably the greatest
9 opportunity to reduce redundancy in the process. We were
10 talking briefly about the 408. If you look at pre-2008, you
11 did not need to go through the 408 process. And like was
12 mentioned, there is an MOU right now where you can avoid the
13 Section 10 permit under the Rivers and Harbors Act.

14 I think a new MOU or a revised MOU would provide
15 the opportunity to do the same with the 408 process.
16 Because as you go through Section 4(e) of the Federal Power
17 Act and you have a license issued, the Corps has the
18 opportunity at that time to do the same type of review that
19 they would do under Section 408.

20 The other thing we've seen is, when the Corps is
21 not a cooperating agency in the FERC-NEPA process, they are
22 doing their own NEPA when they do the 408 process. So you
23 have the FERC-NEPA process occur, and then the Corps-NEPA
24 process occur. So you have the redundancy there.

25 The other is, given that this is a federal
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1 action, you do have the 401 process. The Corps still has
2 engineering regulation 1462 in place from 1991, which is a
3 nondegradation act. The problem with that is, that was not
4 updated after the Clean Water Act was updated.

5 So as compared to having the tiered process that
6 you do under the Clean Water Act looking at designated uses
7 and existing uses, the Corps just says no degradation
8 whatsoever.

9 So those are the two things I think in an MOU
10 that could be addressed and help reduce some of the
11 redundancy with Section 4(e) of the Federal Power Act as
12 well as the 401 authority.

13 MR. LEAHEY: Jeff Leahey with NHA again. I think
14 I just would like to sort of build off of what Ann said.
15 Having been involved in the process for this bill, I think
16 that was part of the consideration of putting an MOU ability
17 in there, for both the FERC and the various agencies to
18 agree within the current regulations and statutory
19 authorities in place to agree to certain timelines, or to
20 certain actions within that scope of the existing authority
21 for the purposes of a two-year process so that it would give
22 the flexibility to the agencies on both side--again, whether
23 it be FERC or the resource agencies or the states--to agree
24 to do some things if certain conditions are met, or certain
25 criteria are met, or certain agreements are made for the

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1 purposes of this two-year pilot process. And I think I
2 agree that these MOUs are specifically--particularly useful
3 for getting to the pilot process.

4 And then, you know, once we start to get
5 experience from the pilot process, we can look to make
6 regulatory or administrative changes after that.

7 MR. KONNERT: Thanks, Jeff. Any other comments
8 here in the room? Does anybody on the phone have any
9 comments?

10 OPERATOR COREY: We have no one in queue at this
11 time.

12 MR. KONNERT: Thank you. Well, we'll move on to
13 the next question, which is for all the panelists.

14 Section 6 of the Act requires that if the
15 Commission concludes that the two-year process is not
16 practicable, that it report to Congress and identify the
17 process--legal, environmental, or economic issues--that make
18 a two-year process impractical. Process, legal, and
19 environmental issues are adequately covered by the other
20 questions on today's agenda. however this question was
21 included to stimulate discussion of potential economic
22 factors that may affect the feasibility of a two-year
23 process.

24 Do any of you feel like there are economic
25 factors that could affect the practicability of a two-year
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1 process? Go ahead, Dan.

2 MR. LISSNER: Thank you, Tim. Dan Lissner from
3 Free Flow Power. I probably said this before, but I'll say
4 it again because it's an important point. The length of
5 time it takes to obtain a FERC license is, in our view, the
6 single greatest impediment to attracting investment for new
7 hydropower projects on existing dams.

8 The challenge of this is that under the current
9 licensing regimes a developer is in a situation of having to
10 ask investors or power consumers to invest capital or make
11 their power purchasing decisions during stages of
12 development that are beyond these investors' or power
13 offtakers customary time horizons for making those
14 decisions.

15 Particularly, when significant costs are
16 associated with pre-filing studies, those project--the cost
17 of those studies must be funded from somewhere. And it's
18 very difficult to attract the interest of an investor that
19 has a two- to three-year time horizon when you're talking
20 about a project that is five years away from placement in
21 service.

22 As a result of that, developers are in a
23 situation of having to bootstrap projects through these
24 costly study processes and through these long years of
25 pre-licensing activity. It's an extreme challenge that

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1 pervades all development of hydropower projects, including
2 new hydro on existing dams.

3 So shortening the time that is spent in the
4 regulatory process would be the most significant benefit to
5 these types of projects, because it would expand the pool of
6 potential investors, or the pool of potential power
7 consumers to consider projects that previously were outside
8 of their investment time horizon, or investors that have a
9 more conservative tolerance for the types of risks that are
10 inherent in the development phase of the project.

11 And in preparing for this panel discussion, one
12 of the questions we pondered was whether accelerating the
13 licensing process, asking not just resource agencies and
14 FERC to compress their timeframe but expecting developers to
15 accelerate their development activities into a compressed
16 timeframe, would be challenging from an economic perspective
17 to developers, requiring the commitment of capital earlier
18 in the process versus later.

19 I can only share my view, but I anticipate it's a
20 view shared by most if not all developers on this. Projects
21 with the clearest pathway to success are across the board
22 the type of projects that are going to receive the priority
23 from developers.

24 These projects don't get better with age. And I
25 have absolutely no reservations about allocating the
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1 resources that are necessary to a project or to a class of
2 projects that have the clearest pathway to success. And
3 "success" in this situation means a construction and
4 placement in service of a project with minimal environmental
5 controversy on the fastest timeframe possible.

6 MR. KONNERT: Thanks, Dan. Sarah?

7 MS. HILL-NELSON: This is Sarah from Bowersock.
8 And I can only--I mean, I agree fully with Dan, and I can
9 give our specific example, which was that we knew that our
10 project was going to--it was noncontroversial. We were very
11 confident that, in terms of the length of FERC licensing
12 ours was going to be on the short end.

13 But it's very hard to convey that to funders.
14 And we could say all day long, oh, this project is really
15 clean. It looks really good. We have all these approvals.
16 And we have all these state agencies. If we were in some
17 sort of two-year program where, you know, we had gone
18 through the checklist, and they'd done a pre-analysis of our
19 project and said, okay, you are fast-tracked. Now no
20 guarantees, right? But certainly that would be something
21 that we could have shared with potential investors to say:
22 Well, actually, yes, we've gotten the nod from FERC as well,
23 and we are considered noncontroversial and therefore we
24 think that our chances of having an expeditious licensing
25 process are better. I think that would have been helpful
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1 for us.

2 MR. KONNERT: Go ahead, John.

3 MR. WARNER: John Warner, Fish & Wildlife
4 Service. I'm not really sure what the point of the question
5 was, but, you know, the universal response I got from
6 everybody that I consulted with on our side to this question
7 was: Workload. Agency budgets. And staffing.

8 And there certainly were a lot of factors
9 involved if you implement a two-year process. First, you
10 know, we're advocating that the process would need this, but
11 it would require potentially more, a more definitive pre-PAD
12 consultation between the agencies and the developer.

13 To the extent that that is a criteria for
14 qualification for the two-year process, and failure for the
15 agencies to respond, you know, and provide a full response
16 on the applicability could lead to projects being, you know,
17 in the two-year process that we don't think are ready. But
18 we don't have the resources to do that review.

19 Also, following on what Dan was suggesting, was
20 that if a two-year process was out there, there would
21 actually be more projects being proposed. So that adds to
22 the workload factor as well.

23 And to be honest, at least for the Service, we
24 don't have a lot of people out there in the field now
25 working on projects. And with pre-licensing and post-

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1 licensing activities increasing more projects and more
2 constrained timeframes post-filing, and more pre-
3 consultation could be a serious burden that it may be
4 difficult for the agencies to deal with.

5 MR. KONNERT: Thanks, John. Anybody else on the
6 panel want to chime in?

7 (No response.)

8 MR. KONNERT: Okay, anybody in the audience have
9 any thoughts on this question? Go ahead and step up.

10 MR. GILBERT: Hi. Kirby Gilbert with MWH. Just
11 on the question of economic viability, I just want to say it
12 seems that if a project can get to license, if it can be
13 licensed, then generally projects seem to have a much better
14 chance of success. They get more interest from investors
15 and financial backing.

16 So to the extent, as Ann was saying, you know,
17 things could be done to, you know, in this two-year process
18 to help create more of a single administrative record, or an
19 administrative record other agencies, even the states, can
20 just tier off of all working together, so there's not such a
21 disperse decision-making process that goes through a
22 licensing.

23 Every time there's another jurisdiction, another
24 approval, that really does have a cost to a developer. So I
25 just think it all kind of works together to have everybody
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1 coming together to get to a license, even if there are some
2 things that don't need to be resolved. If a project can get
3 licensed, it's probably more economically viable.

4 MR. KONNERT: Thank you. Does anybody on the
5 phone have any thoughts on this question?

6 OPERATOR COREY: Once again, press star then one
7 if you'd like to ask a question, or you would like to make a
8 comment.

9 (Pause.)

10 We have no questions at this time.

11 MR. KONNERT: Okay. Thank you.

12 All right, this next question is for Chris
13 Maynard and Dan Lissner. Does the type of project, whether
14 it's a non-powered dam or a closed-loop pumped storage
15 project, do you think this should affect the steps included
16 in a two-year process?

17 Chris, do you want to start?

18 MR. MAYNARD: Sure. I am really unclear what a
19 closed-loop pumped storage project is. So it totally
20 depends on that. If it's no water coming in, no water going
21 out, no water going to groundwater, I don't know about
22 evaporation, I don't know if anybody's talked about that
23 yet, but that could affect the steps. Or the steps could be
24 the same.

25 MR. KONNERT: I'll give you, just for
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1 clarification, the definition that we put out on our
2 website, which is our understanding, which is: closed-loop
3 pumped storage as projects that are not continuously
4 connected to a naturally flowing water feature.

5 So "not continually connected" is the key.

6 MR. MAYNARD: Okay, that means groundwater, too.

7 (Laughter.)

8 MR. KONNERT: I'm getting nods.

9 MR. MAYNARD: That's one of our questions,
10 because it could be a big thing.

11 So I guess that's my main, my main response.

12 MR. KONNERT: Okay. All right, Dan, do you want
13 to add?

14 MR. LISSNER: I'll give a bit of a circuitous
15 response to this, as well. I would say for the most part
16 the comments that I've made today are at least focused in my
17 mind on the new hydropower on existing dams' market. That
18 is not to exclude closed-loop pumped storage; just to
19 express my point of view and how I've been speaking here.

20 The distinguishing characteristic about these
21 comments and why thinking about new hydro on existing dams
22 is a relevant segment to this is because I characterize
23 these are projects in which the existing environment is
24 reasonably well understood, and that the operations of the
25 project are proposed in such a way as to promote

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1 environmental compatibility.

2 I think that that's broadly two attributes
3 associated with hydro on existing dams, the same two
4 attributes I would assert as likely to be governing
5 principles in the feasibility of any two-year licensing
6 process. Therefore, if a closed-loop pumped storage project
7 had those two attributes, it's relatively common.

8 I can imagine with the pumped storage project
9 you're going to have the added complexity of acquisition of
10 water rights that may or may not entail in a new hydro on
11 existing dam project. You're likely to have the
12 requirements for additional land acquisition in terms of
13 acreage than a new hydro on existing project may entail.

14 But for the most part, I think that the focus
15 ought to be on projects where existing available information
16 is sufficient or reasonably sufficient to answer the
17 baseline questions, and where the operations of the project
18 are designed in a way to maximize environmental
19 compatibility. And if those two facets are set, I think any
20 category of hydropower project could conceivably be eligible
21 for a two-year process.

22 MR. KONNERT: Okay. Thanks, Dan.

23 Well, we're going to move forward with the next
24 question. This is for Brian, Sarah, and Melanie. That is:
25 Should there be a single standard two-year process? Or

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1 should developers be allowed to propose unique project-
2 specific processes?

3 Brian, do you want to start this off?

4 MR. FITZGERALD: Sure. Thank you. Brian
5 Fitzgerald. It should be a single defined process so that
6 right from the start all parties understand what the
7 requirements are, what the timelines are going to be, and
8 they can plan accordingly.

9 It would seem unproductive to introduce an
10 additional step of basically defining or modifying a process
11 before actually getting the specifics of the project,
12 particularly if you only have two years to do this from
13 start to finish.

14 So again a single defined process.

15 MR. KONNERT: Sarah?

16 MS. HILL-NELSON: Sarah, with Bowersock.

17 I think a single defined process makes sense, but
18 I think as we've discussed with the TLP there are several
19 options all the way along the way to shorten the process.
20 And I think, depending on the nature of the project, they
21 could choose to opt in or opt out of those mechanisms that
22 shorten the process. But it's the same process for
23 everyone. It's clear and defined from the outset.

24 MR. KONNERT: Okay. Melanie?

25 MS. HARRIS: Melanie Harris, NOAA Fisheries.

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1 I agree, a single standard two-year process makes
2 sense, established as modified ILP is what we were thinking
3 but it could be a modified TLP for the pilots. And then
4 through formal rulemaking for subsequent projects.

5 Some considerations for the standard two-year
6 process--we talked about some of these already--but
7 noncontroversial projects. Again, we think there should be
8 a standard checklist for determining project eligibility,
9 including standard information needs in studies.

10 I wanted to point out that this screening
11 criteria or checklist concept is used in other contexts as
12 well. There are some NEPA categorical exclusions for
13 suitability criteria for solar and wind development
14 proposals on BLM lands, on BLM right-of-ways.

15 So there is some precedent for using that kind of
16 a checklist concept. Also, the PAD must demonstrate that
17 the project meets the eligibility criteria. We think that
18 the scoping in study phases could be shortened in this two-
19 year process. FERC would produce the NEPA document faster,
20 ultimately.

21 We think that the two-year process should include
22 a robust communications plan among the parties, and also
23 follow FERC best practices, starting with some of the ILP
24 evaluation workshops that have occurred, ensuring that those
25 ILP best practices are in place going forward.

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1 And the PAD should include the standard studies
2 that will be completed. I also wanted to point out that
3 studies are done up-front in a pre-application phase for
4 other renewables as well, for BLM permitting of solar and
5 wind projects, and also transmission line projects. I just
6 wanted to make that point.

7 MR. KONNERT: John, do you want to add to that?
8 Oh, I'm sorry, John--there are three Johns.

9 MR. KATZ: John Katz. My question about what
10 I've just heard is, in thinking about this--and to the
11 extent I've discussed it with staff and with some folks on
12 the outside--I'm wondering, when I hear a single two-year
13 process, how restrictive you want to get with that?

14 Because I could see, I think when we posed the
15 two options, what we were thinking of is, you know, if
16 you've got a single standard two-year process it says three
17 months for this, three months for that, six months for this,
18 you know, it's standard, everybody knows what the timeframes
19 are. But I could see instances where, for example, everyone
20 agrees you don't need studies. You know, it's a great PAD,
21 it's a well-understood river basin, but you're really going
22 to need a long time to fight about minimum flows; or it
23 could be the opposite.

24 And so if you do a single standard process, are
25 you preventing yourself from sort of the stakeholders
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1 sitting down a little bit before they get to FERC and
2 saying, you know this is the part that's going to take a
3 really long time in this case, and that may have value in
4 certain instances.

5 MR. KONNERT: Thanks, John. John Seebach.

6 MR. SEEBACH: In this case it may not have
7 mattered which John you called first. I had something
8 similar to say.

9 I do think that--I tend to think of a two-year
10 process, or a successful two-year process as being one where
11 FERC defines a set of best practices. And those best
12 practices might be site selection; best practices around
13 outreach and consultation; best practices around
14 professional application preparation, and just really
15 addressing the issues that need to be addressed.

16 And in that sense, the two-year process is almost
17 a reward for following best practices that are likely to
18 lead to applications, or to licensing within two years, or
19 expedited licensing.

20 I think it's important to see that as a reward,
21 not a right. I think there are projects where you may enter
22 into a two-year process. You may have everything lined up
23 and then start to fail to meet deadlines, the applicant may,
24 in which case a two-year process probably isn't appropriate.

25 So you need to have a process I think that you
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1 can, if you set a goal for two years, if things go wrong you
2 need to have a way to sort of fall out into a regular
3 process so all that work isn't lost.

4 I like the idea of defining those things
5 carefully. So in that sense I agree that having a single
6 process is good. But I would also like to add that Congress
7 has asked that we collectively--well, Congress has asked
8 that FERC pilot different projects. And I think there is an
9 opportunity there to try a few things.

10 You're going to have to pilot a few projects. So
11 it might be worthwhile to try to run those pilots a little
12 bit differently to see what works and what doesn't. So I
13 think ultimately you might want to capture a single set of
14 best practices that form the basis for a two-year process.
15 But in the pilot phase it might make sense to experiment a
16 little bit.

17 MR. KONNERT: Okay. I'm going to move forward
18 with one more question, and then we'll open it up to the
19 audience and those on the phone. And this is for John
20 Warner and Dan LIssner.

21 Section 6 of the Act requires investigation of a
22 two-year process which does not explicitly mention a two-
23 year process for exemptions from licensing. Additionally,
24 the information that we presented earlier indicated that the
25 average process time for the 12 recently authorized
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1 exemptions was 2.6 years, with 1.4 years for pre-filing and
2 about 1.2 years for post-filing. In light of this
3 information, is a two-year process needed for exemptions
4 from licensing? Or are existing procedures adequate for
5 expedited processing of these types of projects?

6 John?

7 MR. WARNER: This is John Warner. I think the
8 data you presented is the reason why we don't think there's
9 a need for a different process for exemptions than currently
10 exists.

11 For those projects without complex issues where
12 studies are either conducted in a timely manner or aren't
13 necessary, and where there is no dispute over--of the terms
14 and conditions, you know, preliminary terms and conditions
15 that the agencies identify, we often skip steps in the
16 consultation process. You know, they're filed with FERC
17 relatively quickly and can be expedited, you know, to
18 approval. And it's uncommon for us to have them run very
19 long, and the data sort of shows that.

20 Certainly in--and mostly I'm referring to case-
21 specific exemptions, those kinds of exemptions go even
22 faster. There's certainly no need for a process to change
23 that. They almost are always under two years. In fact, I
24 assume the real short ones on the list are conduits,
25 probably.

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1 MR. KONNERT: I don't think they included
2 conduits, no, actually. Thanks, John. Dan?

3 MR. LISSNER: Thank you, Tim. Dan Lissner from
4 Free Flow Power. We don't have any active projects in the
5 exemption process right now, so I don't have any particular
6 comment on the applicability of that. I would welcome
7 opening it up to anyone else with experience on that
8 question.

9 MR. KONNERT: Okay. Does anybody else on the
10 panel have any thoughts on that one?

11 (No response.)

12 MR. KONNERT: Okay, well then I'll open it up to
13 the audience for the previous three questions. Does anybody
14 in the audience have any thoughts? Jeff?

15 MR. LEAHEY: Jeff from NHA again. I think from
16 NHA's perspective what we would just say is that good public
17 policy is good public policy. And if this process results
18 in some improvement that everyone believes are improvements
19 to the process, then if they can apply to exemptions, if
20 they can apply to licenses, if they can apply to other types
21 of projects people think outside of this universe that we're
22 looking at right now, then we would encourage I think FERC
23 to take a look at where those improvements can apply across
24 the board.

25 I also would just talk a little bit about sort of
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1 the economic question that was raised earlier, which I think
2 we took as Dan did, sort of what this means to the economics
3 of developers and projects.

4 And certainly at NHA what we were trying, and
5 believe is that hydropower, in order to maximize its
6 competitiveness with other technologies, the licensing
7 process and the time that it takes to get through the
8 licensing process is a hindrance to the competitiveness and
9 building out of the hydro system.

10 You know, I can say that I have talked with
11 member companies who are predominantly hydro owners who have
12 said if they had had to build new generation today they
13 would not build hydro, even though they would probably
14 prefer it, because of the fact that the licensing process in
15 comparison to some of the processes for resources like
16 natural gas or wind is just that much longer. And for a lot
17 of the reasons that was discussed here.

18 And that comes whether they are a developer, an
19 IPP type who are looking out for looking to third-party
20 financing, but we've also heard it from utilities who could
21 self-finance some of this development but don't or won't
22 because they just think the process, if it takes too long,
23 doesn't make sense for their shareholders and others to move
24 forward on.

25 And also they need it for certainty. You know,
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1 we have found that the utilities and others are looking for
2 more certainty in their business planning and in their
3 resource planning, and not being able to identify how long
4 it will take, or a reasonable time it will take to build
5 some of these projects just starts to drive them to other
6 resources where the timeline is more certain.

7 And the only other thing that I will mention is,
8 particularly on the federal level with some of the tax
9 incentives, but certainly also on the state level with some
10 of the tax incentives, in the past what we have seen is a
11 disconnect between the time it takes to license projects and
12 the time for which incentives are available for renewable
13 resources.

14 And inevitably for some technologies, not only
15 hydro but certainly hydro as a prime example, the long
16 licensing process time has made the availability of the
17 incentives so uncertain that developers basically couldn't
18 rely upon them in order to pencil out their projects.

19 And so certainly the fact now that some of these
20 incentives are going to be expiring themselves is an issue
21 unto itself, but that interplay between the certainty and
22 the length of the licensing process and the availability of
23 incentives is one that goes to the heart of some of the
24 economics issues.

25 MR. KONNERT: Thanks, Jeff.

26

1 Does anybody on the phone have any thoughts on
2 these previous three questions?

3 OPERATOR COREY: If you'd like to have your line
4 opened, please press star one at this time.

5 (Pause.)

6 We have no questions or comments at this time.

7 MR. KONNERT: All right. Thank you.

8 Well we had said we would take a break at two
9 o'clock. We are almost at two o'clock. We're at a good
10 stopping point. We are well ahead of schedule, so I know we
11 said a brief five-minute break but I think we're safe to
12 take a ten-minute one.

13 (Laughter.)

14 MR. KONNERT: Do you want to do longer? Do you
15 want to do fifteen? So let's say a little after 2:05 we'll
16 be back in here to start up.

17 (Whereupon, a recess was taken.)

18 MR. KONNERT: Let's take our seats and start the
19 second part of the workshop.

20 All right, thank you. Well now we're going to
21 move on to the questions related to the factors and criteria
22 for identifying pilot projects.

23 The first question is for Chris, Kyle, Sarah, and
24 Melanie. What project design or setting criteria should be
25 met to be eligible to use a two-year process? And would the

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1 same criteria apply to projects at non-powered dams and
2 closed-loop pumped storage projects?

3 Now John Katz wants to make a comment before we
4 go to the panel members on this one.

5 MR. KATZ: Yes, and I'm not directing this at the
6 particular fortunate panel members who got asked to answer
7 this question, but I guess I want to pose a challenge to
8 everybody here, not just the panelists.

9 You know, I heard in the first part, I think the
10 discussion was very useful, but what I essentially heard
11 was: Well, if you have a noncontroversial project, and you
12 pull together a great PAD, and there's no controversy, and
13 there's little or no need for studies, something would fit
14 in a two-year process. And that's kind of like tell me
15 something I don't know, or something that none of us knew.

16 You know, we all know that if there's an easy
17 project it can be done pretty quickly. And Congress I think
18 was asking us to all push a little bit. Because it's sort
19 of like if Congress said, you know, prove to me you can read
20 a book in a day and I come back and say, yes, I can, and
21 it's GREEN EGGS AND HAM, this is not going to impress
22 Congress all that much. And it may be asking a lot to say I
23 can read WAR AND PEACE in a day, but, you know, maybe
24 there's RED BADGE OF COURAGE, or BRIDGETT JONES, or some
25 kind of page turner that we could do to show that we can do
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1 something a little bit more than we've done before and push
2 ourselves a little bit harder.

3 So as we go through the rest of this, I'm
4 interested in seeing this. Because if the answer is: Well,
5 yeah, the TLP is going to work for a certain class of new
6 projects. Well, that may be the answer but--well, I
7 shouldn't say "but"--I mean, that may be the answer and we
8 will essentially be going back and telling Congress: Okay,
9 we'll try to do what we did better, faster, higher, but, no,
10 there's not really anything new to tell you.

11 So if folks could bear that in mind as we go
12 through the rest of this, it would be helpful to me.

13 MR. KONNERT: Thanks, John. Chris, we'll start
14 with you with this question.

15 MR. MAYNARD: Well this is a two-part question.

16 MR. KONNERT: Yes.

17 MR. MAYNARD: And I'll address the second part
18 first. I was talking about groundwater for the pumped-
19 storage projects, and that would be essential. That would
20 be essential criteria that the water was isolated from
21 groundwater. That's what my hydrologists tell me, for
22 several reasons, and one of the reasons is that it can't
23 under our laws, can't affect another senior water right,
24 which it very easily could. Taking water from one place and
25 putting it into another changes the groundwater to a greater
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1 or lesser extent.

2 And a closed system might be great, but it would
3 take study. That would take some years of study.

4 So for the second part, some of the siting
5 criteria, well one thing we'd want to know would be would
6 the--I'm talking about on existing dams now--would the owner
7 of the dam be able to mesh their interests, and their
8 directive, and their mission with the use of water for
9 power?

10 And the project would need to pass a dam safety
11 inspection by FERC, and be geologically stable, and have the
12 ability to maintain existing flows at existing levels.

13 A project might be beneficial on flows, but we
14 wouldn't know that in two years, most likely. You know, if
15 it changed flows it might improve it for fish and habitat,
16 but that needs some study.

17 There's a fair amount--in Washington, a lot of
18 the dams have already been looked at. And if they don't
19 have power on them, there was a reason for that at the time.
20 So there are existing studies. And if those studies are
21 accepted by the agencies, that's a step in the right
22 direction.

23 That's a start. I'd like to hear from other
24 people.

25 MR. KONNERT: Kyle.

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1 MR. JONES: I'm afraid I showed up without an
2 answer to that question, other than what John admonished not
3 to use up front.

4 (Laughter.)

5 MR. JONES: As far as project design and siting
6 criteria, obviously the simpler the project is the easier it
7 is for you to deal with it, and the easier it is for you to
8 get it through the process.

9 I think Chris basically said the same thing when
10 he was dealing with groundwater. So that's the only answer
11 I have. I would recommend anyone who plans to develop power
12 at any of our projects to talk explicitly up front with our
13 district folks. And those are the only ones who can give
14 you advice on that.

15 Hopefully at some other point in the future we
16 may have a list that we can provide, but today I do not.

17 MR. KONNERT: Sarah.

18 MS. HILL-NELSON: Hi, this is Sarah from
19 Bowersock, and I have read GREEN EGGS AND HAM. Because,
20 really, that's I think my role here, too. I did have a very
21 efficient and short licensing process, and I think our
22 project really exemplifies what can be done with the
23 existing process.

24 So at the risk of reciting GREEN EGGS AND HAM to
25 you all, I mean there's so many--I mean, to dig into this

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1 criteria I think it's going to be hard for me in this time
2 to lay out: Here are these XYZ criteria.

3 And I have heard a couple of people say, well, we
4 really need specific criteria. I mean, my gut is really to
5 say: Well, you just really have to work with the agencies
6 in advance. And it just requires a ton of hard work with
7 the agencies. And if you walk into that PAD with the
8 agreement of all the agencies, then you're going to be
9 fine.

10 But I think people had the concern that well,
11 then you're forcing the developers to do all the work, which
12 I mean I think every project is different, but I think there
13 has to be a lot of work done on behalf of the developer.

14 So what did we do that I think our criteria that,
15 if there were some sort of process that they looked at us,
16 we walked in with all those letters. Previously we had
17 achieved certification from the Low-Impact Hydropower
18 Institute, which I think was incredibly valuable for us
19 because we had already established relationships with all
20 those agencies. And we knew everyone that was there
21 already. So when we went to this licensing project, they
22 knew us, they knew our project, and we could say: We're
23 going for a new license. And that really lowered the
24 hurdles for us.

25 So certainly if someone had already achieved Low-
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1 Impact Hydropower Certification, they've been through the
2 wringer. I mean, I think that would be sort of ours is a
3 little bit--that would be incremental hydropower, rather
4 than a non-powered dam where that would be applicable.

5 But anything you, in terms of minimal changes to
6 river flows, making sure that if there are any T&E species
7 that would be something you would have to really think
8 pretty hard about, about whether--because, you know, it's
9 possible if there's some kind of setting where there's a T&E
10 species where it could be put through pretty quickly, but I
11 can see that that would be a pretty significant hurdle.

12 So I don't know that I have any other criteria
13 other than sort of the obvious, you know, in terms of
14 getting all of the NGOs to buy in, and everyone to say, you
15 know, in principle we think this is a good project. I think
16 that would facilitate it, I think. For me to dig into
17 specifics on the criteria is a little, maybe a little
18 daunting.

19 MR. KONNERT: Okay. All right, thanks. Melanie?

20 MS. HARRIS: Melanie Harris, NOAA Fisheries.

21 I'm not very familiar with closed-loop pumped
22 storage, so our thoughts for criteria are focused on the
23 non-powered dams. I like Sarah's version of GREEN EGGS AND
24 HAM, so I can add onto the GREEN EGGS AND HAM.

25 You know, those projects--we've said a lot of
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1 this already--but which should be eligible are those with
2 little or no potential adverse effects on resources beyond
3 the existing footprint, if you're talking about an existing
4 dam. Projects with run-of-river operations, or you can
5 build on existing operations, no major flow modifications,
6 no creation on new by-pass reaches, no major changes in
7 reservoir, storage parameters or water quality; the project
8 doesn't create new fish passage barriers; or impede aquatic
9 species' ecological needs in terms of life cycles.

10 And then building specifically on the fish
11 species, the project wouldn't be located in a sensitive
12 area. And by that we think of areas where there are ESA
13 species, or Designated Critical Habitat, or even for non-ESA
14 species where there are likely to be significant not-easily-
15 resolvable impacts on nonlisted androgenous fish species,
16 you know, could also be a concern.

17 You know, projects involving ESA species could
18 work in a two-year process if there's a lot of front-
19 loading, and a lot of agreement, and a lot of
20 preconsultation done up front so everyone does come to the
21 table with the same understanding.

22 So I'm afraid there's nothing earth-shattering
23 there.

24 MR. KONNERT: All right, thank you, Melanie. Why
25 don't we go to John first.

26

1 MR. WARNER: John Warner, Fish & Wildlife
2 Service.

3 I'm not going to help John Katz's request, I'm
4 sure, with my list here. But I guess looking at it from--a
5 lot of the comments earlier were little or no--you know, few
6 or no studies. And in order to sort of get to a point where
7 you say well, we don't think we need, you know, any, or very
8 few studies, you need to have issues that are already
9 addressed, you know, before that.

10 And I'm not going to address the closed-loop
11 projects because there's no familiarity with those, but, you
12 know, for us a list of, you know, low-impact projects, some
13 of these are actually certified certification requirements,
14 but I'll just go through the list.

15 No federal, and probably state, depending on the
16 state, roles, T&E species are present, or there's clearly--
17 there's no clarity that there be no effect, or not likely
18 ever to see effect determination.

19 Operate, the project be operated in run-of-river.
20 There'd be no change in the reservoir elevation by increase
21 in dam height or addition of flashboards. Either no bypass
22 reach, unless the PAD includes information that defines that
23 resource, you know, limited resources and agencies concur.

24 Or a flow study is proposed in a PAD that's
25 agreed to and is achievable in the timeframe of a one-year
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1 pre-licensing application.

2 Either no plans for a migratory fish restoration,
3 or an agreement by the applicant relative to fish-passage
4 measures that would be needed.

5 No existing fish passage facilities at the site
6 that are operating without hydro. This is a problem with
7 trying to build a hydro project at an existing--where an
8 existing fishway exists. So just because it's fish passage
9 doesn't mean it's okay, because the hydro project has to be
10 integrated with the existing facility. And that would
11 probably take quite a bit of engineering work and modeling.

12 An agreement to install protective screening to
13 minimize impingement and entrainment. And no existing water
14 quality impairment.

15 It's sort of a daunting list, and it probably
16 doesn't get, like I said, it doesn't get at anything John is
17 asking, but with that sort of list a project comes in with a
18 PAD that they've worked with the agencies to come up with
19 either of these, or to some extent, as Sarah indicated, an
20 agreement on measures, you know, will make it not only a
21 lower impact project but one that the licensing process can
22 be expedited.

23 You know, once you go off some of the things I
24 mentioned, it will require often substantial studies that
25 can't be achieved in the timeframe of our short licensing
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1 process.

2 MR. KONNERT: Thanks, John. I'm going to go with
3 Dan first.

4 MR. LISSNER: Thanks, Tim. And, John, I will
5 speak directly to your challenge as well and articulate our
6 viewpoint.

7 Following on the parameters that John has
8 suggested, and that Melanie has addressed, at the risk of
9 oversimplifying and clearly categorically speaking, I think
10 what we are all describing here on these new hydro on the
11 existing dams projects, these are the easy projects. These
12 are the projects that have these attributes.

13 They may not be perfect, the information might
14 not be perfect. Every river system is unique, and I
15 understand there are project-specific challenges. But I
16 believe that the mandate that has been recommended to us and
17 to FERC unanimously has been to see what we can do to
18 advance the easy projects.

19 So obviously I'm coming here from the standpoint
20 of a developer, but I view this as when looking at new hydro
21 on existing dam project. Why not a two-year process?

22 Of the challenging issues that are certain to
23 arise in a licensing process, what of these issues cannot be
24 addressed through the mandatory conditions imposed by
25 resource agencies through the conditions that are inherent

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1 in FERC licenses?

2 I think when we're talking about existing dams we
3 are speaking to a reasonably well understood environment.
4 When we're talking about projects that are going to be
5 operated in a run-of-river fashion, we're talking about
6 reasonably environmentally compatible. I'm not going to
7 over-generalize and suggest there are no issues, let's go
8 ahead; but I don't see any show-stoppers in this category of
9 hydropower development that cannot be addressed through
10 cooperation through a licensing process and through the
11 conditions that will be included in any FERC license.

12 And from our standpoint, it is better to get to
13 that sooner than through a long, cumbersome, and certainly
14 through a largely scientific research process in order to
15 characterize that existing condition.

16 And I will add one other point that is not
17 necessarily addressed in the question, but as approaching
18 this I want to make sure I understand and we understand what
19 the goal of this process is.

20 We are embarking on a series of questions to talk
21 about the pilot projects, a pilot process, and will provide
22 comments on what's in and what's out. We are all for pilot
23 processes. Let's try new things. Let's try to figure it
24 out. But I do want to be clear, from Free Flower Power's
25 developer perspective, if the goal of this pilot process is

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1 a pilot license, or an extra conditioned license, or
2 something other than the traditional, typical FERC license,
3 I don't think that's something that would be of interest to
4 us as developers.

5 I think that is something that is significantly
6 impaired from a financing standpoint. So I would certainly
7 challenge, consistent with that mandate, that what we should
8 be striving for is to use a pilot process to license
9 projects in an innovative way, but not to carve out some
10 sort of special or conditional status for them.

11 And if that is the objective, we're all in and I
12 think that's terrific and I think we ought to think broadly
13 about how new hydro on existing dams fits that broad
14 mandate. Thank you.

15 MR. KONNERT: Thanks, Dan. John.

16 MR. SEEBACH: So, John, your point about GREEN
17 EGGS AND HAM I think is appropriate, given that it's a book
18 that is largely about criteria. So sort of as you were
19 saying that, I was imagining "Would you, could you, on a
20 dam" that creates new--

21 (Laughter.)

22 MR. SEEBACH: --barriers to fish passage.

23 So I want to throw out a couple of criteria that
24 I think are--like Dan said, they're not show-stoppers but
25 any one of these things is going to make it harder to get
26

1 done in two years.

2 And that is I think what is troublesome about a
3 two-year process is the idea that if these kind of issues
4 arise, you need a way to address them without having that
5 sort of a boiler room of a two-year process surrounding
6 it.

7 So for us, information should be based on recent
8 data, or at least data that is acceptable to the agencies
9 and stakeholders.

10 The project should probably not be proposed on a
11 river reach that's been designated as a protected reach,
12 either by a federal or a state statute.

13 The project shouldn't create new barriers to fish
14 passage.

15 The project shouldn't modify flows--although I
16 actually argued the project might want to modify flows if we
17 can find a way to improve the health of the river. And
18 that's something I think we're kind of losing in this
19 discussion. There are real opportunities that I've seen in
20 the development of hydropower on existing dams to actually
21 improve the conditions of the river where you put in a
22 withdrawal structure that can allow you to modify
23 temperatures downstream and improve temperatures in the
24 river reach where the impairment of the river reach for
25 temperature is caused by the existing dam.

26

1 So we should be looking not only how do we permit
2 these things faster, but how do we permit these things
3 faster in a way that benefits the river downstream.

4 And then finally, whether or not there are
5 Endangered Species present. If there are Endangered Species
6 present, I think it is just going to be hard to meet all the
7 obligations that the law requires in a two-year process.

8 To John's challenge--well, I'm sorry, before I
9 get to that. I do think that Sarah is absolutely right. In
10 order to get these projects to completion quickly, it
11 requires a very active, hardworking developer. It's kind of
12 like going to college. Some people can finish in two years,
13 but not everybody can. And it requires a special--you know,
14 it requires somebody who is willing to work really hard to
15 do that. And I think it is important that we do not lose
16 sight of that.

17 And then to John's challenge that we think about
18 something new, earlier in the first half of the program,
19 Dan, you mentioned the idea of moving some studies, or some
20 decisions about operations, or decisions about mitigation to
21 after the license has been issued.

22 And I just heard you say that you were concerned
23 about conditional licenses, so licenses where there is sort
24 of a condition. Because that does place additional risk on
25 developers.

26

1 You know, our concern is that that risk not be
2 shifted to the resource. But if there is a way to expedite
3 licensing with the understanding that if there are issues
4 that need to be resolved, and those issues can be resolved
5 after licensing, and the developer is willing to assume the
6 risk of resolving those issues in a way that doesn't affect
7 the resource, then I think that is something that is worth
8 looking at.

9 MR. KONNERT: Thank you, John. All right,
10 another question for the panel--oh. All right, go ahead,
11 Ann.

12 MS. MILES: Ann Miles, FERC. I wanted to raise
13 one question. A lot of the criteria has to do with the
14 environmental situation.

15 One thing that we see sometimes in the early
16 stages of licensing development for original projects after
17 the PAD is filed is the project design is not fixed. So I'm
18 a big curious about anyone's thoughts on project design.

19 You know, there can be good aspects to it in that
20 you're allowed to work through it and come to something
21 that's better, but then it's difficult if you're trying to
22 fast-track it when you don't know what you're dealing with
23 in the beginning. So it's just a topic I haven't heard
24 anything about today.

25 MR. KONNERT: Thanks, Ann.

26

1 Well the next question is for John Seebach, John
2 Warner, Dan Lissner, and Brian Fitzgerald. This is similar
3 to the previous one.

4 This time: What environmental criteria should be
5 met--which some of you touched on already--to be eligible to
6 use a two-year process, and again would the same criteria
7 apply to projects in non-powered dams and closed-loop pumped
8 storage projects?

9 John Seebach, do you want to start? Do you have
10 anything to add?

11 MR. SEEBACH: Yes, I think I just answered that
12 in the last question. I mean, design, siting, and
13 environmental criteria are really all part and parcel of the
14 same thing.

15 MR. KONNERT: Okay, John, do you have anything to
16 add?

17 MR. WARNER: No. No, the same answer.

18 MR. LISSNER: I think that's right, and I'll
19 stand by that but I'll speak to--I'll provide a little bit
20 of clarification on our perspective on the question that Ann
21 just asked: How does project design--when does it enter
22 into this process? And at what point does it become
23 solidified sufficiently to enable decisionmaking about that
24 process?

25 At Free Flow Power, we have experimented with a
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1 variety of ways of approaching this. In some situations,
2 viewing the project design as a very fungible aspect of
3 this--let's work with stakeholders and identify through
4 consultation and through this effort a project design that
5 is most feasible--and in other situations, putting a flag in
6 the ground saying this is the project design. React to it.
7 The reality is: There's a bit of give-and-take in any
8 process you approach.

9 As a starting point, I would recognize that if we
10 were to come to the table in a PAD and say we're evaluating
11 three conceptual alternatives for this particular site,
12 that's not the phase that's going to facilitate resource
13 agencies to react to the project in a manner to get this all
14 done in two years. We have to have a different
15 understanding of the project design at that point.

16 I often find--that said, it's a benefit to be
17 able to adapt a project design to react to information that
18 we're receiving, to react to understandings we're receiving
19 about the resource issues. And if adjusting the angle of
20 the powerhouse, to change the direction that the tailrace is
21 going to address a significant species or habitat issue
22 there, then that's absolutely something that should be
23 prized in the process.

24 I would wrap this up quickly, but it was
25 interesting to hear earlier other panelists comment on the
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1 aspects of the licensing process that they found
2 particularly valuable with John's comment that the PAD, a
3 well-designed PAD is among the most valuable starting points
4 in the process, and the PAD gives you information to react
5 to.

6 In my experience we often don't get the
7 information and the consultation that we would expect in
8 order to make these concrete decisions until the final
9 license application or, often times, after the final license
10 application.

11 A PAD comes with an expectation of generic
12 information sometimes that leads to generic comments, or
13 overly broad study requests back. We use the plan studies
14 document to try to pare that down and say: we got your PAD
15 comments, but what really are the study issues here?

16 Draft License Applications, FERC regularly
17 comments on them. Often times the comments that come from
18 resource agencies, again understandably, come so late in
19 that 90-day comment period that there's rarely an effort to
20 redesign to accommodate those questions in the final license
21 application.

22 So we're looking to get to that point in the
23 process where we have solidified a design. So the more we
24 can get to that, let's put a flag in the ground, what is the
25 project, let's react to it, and address it through
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1 additional post-license studies, through conditions on that
2 risk point, is pretty consistently the type of strategy that
3 we're evaluating in this situation.

4 I don't remember what your question was anymore,
5 Ann--

6 (Laughter.)

7 MR. LISSNER: --but thank you for entertaining
8 that soliloquy.

9 MR. KONNERT: Thanks, Dan. Brian, do you have
10 any thoughts?

11 MR. FITZGERALD: Yes. Brian Fitzgerald.

12 I think the question was largely answered
13 earlier. The only thing I would add is, for example in
14 Vermont another area that we would be looking at are
15 aesthetics and the impact of the project on aesthetics,
16 because aesthetics is a use in our Water Quality Standards.
17 But all of the other points about run-of-river operation and
18 so forth I think are right on the mark.

19 MR. KONNERT: Thanks, Brian. Chris, did you want
20 to add something?

21 MR. MAYNARD: Well I think most of the answers
22 were given in the last question, and we'll provide more in
23 writing of course, but so I'll take the opportunity to talk
24 about something else.

25 If a project was controversial, whether or not it
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1 met environmental standards, that would be something we
2 would be concerned about taking more than two years because
3 it might need to go, and often does go through our appeals
4 process and our state court process.

5 And we like the results of that to be
6 incorporated in a license, which I know is difficult
7 sometimes timing-wise.

8 MR. KONNERT: Thank you. We will now open it up
9 to the audience. Jeff?

10 MR. LEAHEY: Well, John, I am not going to answer
11 your question either, today, but I will say that we are, at
12 NHA--Jeff Leahey at NHA--we are working on it and hope to
13 have more specificity in our comments in response to the
14 workshop.

15 I think generally speaking what we would say is
16 we would hope that the criteria could be as objective as
17 possible. And thought it interesting--and this is just a
18 comment on my part--that there was a lot of discussion about
19 what the projects aren't, or shouldn't do, and it wasn't
20 necessarily a lot of discussion about what the project's
21 affirmatively are or should be.

22 I just again found that interesting that that's
23 how we were trying to define the criteria.

24 I also thought it was interesting that at the
25 same time while there were some people who mentioned ideas

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1 that could potentially be deal-breakers for a two-year
2 process--ESA was mentioned in one, fish passage in
3 another--at the same time, people also mentioned but there
4 might be a way that it is doable if the licensee was
5 supposed--if the licensee came in with a plan, or came in
6 with a fish passage recommendation that we really like.

7 So I guess I tie that into the discussion on
8 criteria because I think that augers for what Sarah and
9 others have talked about, which is the fact that thee can be
10 and should be off-ramps in this process. And that you don't
11 want your criteria to be so restrictive that you don't give
12 applicants the opportunity to come into the process perhaps
13 addressing some of those questions that you thought were
14 going to kick them out of a two-year process. So that you
15 sort of screen them out at the beginning without even sort
16 of having a chance to review what an application looks like.

17 I think that's it. You know, I hear and agree
18 that if you have a controversial project that there are a
19 lot of reasons why that may not get through a two-year
20 process. I think it is very squishy to figure out how you
21 write a criteria to say a project is noncontroversial. And,
22 you know, I think everyone recognizes that, but again
23 writing that into a criteria I think is going to be
24 particularly difficult.

25 Again, I auger back to the ability to have an
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1 off-ramp if something turns out. And someone's idea of
2 controversy may be very different, and you could be working
3 in a licensing process where you have 10 agencies and FERC
4 and stakeholders, and 95 percent of them believe this is a
5 noncontroversial project, and 5 percent believe that it's
6 controversial. So then what do you do then? Just some
7 thoughts.

8 MR. KONNERT: Thanks, Jeff.

9 MR. ADRIAN: My name is Josh Adrian. I'm with
10 Duncan, Weinberg, Genzer & Pembroke. I work with Don Clark
11 there and we represent the Grand Coolee Project
12 Hydroelectric Authority.

13 One of the concerns that the Grand Coolee Project
14 Hydroelectric Authority has is that the--you'll look to, I
15 guess I'm kind of building on something that John Seebach
16 said in the first half of the presentation, and that was
17 that Congress challenged you to look beyond specific small
18 categories of low-hanging fruit, for lack of a better word,
19 projects and to really work on the types of projects that
20 were defined in the statute, as Dan said.

21 And as Ann said earlier, there's already a small
22 subset of those projects, of all the available projects,
23 that would qualify under the statute. And so I guess
24 concerns about additional federal regulatory approvals of
25 other agencies, those types of things need to be kind of
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1 worked together so that there's not a categorical exclusion.
2 And I know that's not exactly the question that's being
3 presented now, but I think 4.4 later on is the question
4 about categorical exclusions, but for a lot of categorical
5 exclusions in the conversation we just had, as Jeff pointed
6 out.

7 And so I would kind of challenge, as John Katz
8 did earlier, you to be a little bit more expansive and try
9 to work within the statute to be more inclusive rather than
10 categorically exclude projects from the beginning.

11 MR. KONNERT: Thank you. Does anybody on the
12 phone have any thoughts on these questions regarding
13 criteria?

14 OPERATOR COREY: Once again, if you'd like to
15 make a comment or ask a question, press start one at this
16 time. One moment please.

17 (Pause.)

18 No questions or comments at this time.

19 MR. KONNERT: Thank you. All right, well then
20 the next question is for Chris Maynard, Sarah, Melanie, and
21 Brian.

22 In order for a project to qualify for a two-year
23 process, do you believe that there should be an agreement on
24 and limits to the need to develop new information? Chris,
25 do you want to start that off?

26

1 MR. MAYNARD: Well I think there should be. I
2 don't have a lot to say on it right now. The information
3 would be needed to be available quickly, obviously, and
4 evaluated quickly, and be able to evaluate and respond to it
5 in terms of developing what are you going to do about that
6 information.

7 MR. KONNERT: Okay. Sarah, do you have any
8 thoughts?

9 MS. HILL-NELSON: I think that, like Jeff from
10 NHA stated, it's a little bit difficult. That's going to be
11 a little bit sticky in developing this criteria. That will
12 be hard to place a limit on it. But I think, as everyone at
13 the table has agreed, I mean if someone states that, oh,
14 there's got to be a lot of study that's done to find out
15 about this project, I think that is going to be potentially
16 a deal killer for a fast track.

17 But as we've discussed, we're talking about
18 projects on existing dams where there are standard outflows
19 from the dams. You know, there have been--you know, the
20 Corps of Engineers is generally managing this site. We have
21 plenty of information on how these sites operate.

22 And so if there's not significant change to how
23 the reservoir is already operating, I mean I think we can
24 agree that as soon as you have to start going out and doing
25 studies it's going to kick you out of this fast track.

26

1 But I think it is very likely that a significant
2 portion of these projects would not need additional indepth
3 studies. So I mean I think that would be really hard to
4 define.

5 MR. KONNERT: Right. Okay. Thanks. Melanie?

6 MS. HARRIS: Melanie Harris, NOAA Fisheries.

7 I have said before that I think there should be
8 some standard information needs and studies developed based
9 on the project type, and they don't all necessarily need to
10 be field studies. They could be different kinds of studies,
11 gatherings of information. But we do think that there
12 should be some standard list so every knows coming in what
13 we're talking about in terms of project feasibility.

14 I mentioned before also the MOUs could be helpful
15 to document what the agreement is on those standard studies'
16 information needs. You know, if there is a standard agreed-
17 to list that the PAD should include, those standard studies
18 that will be completed.

19 So the short answer to that question is: Yes,
20 there should be some agreements on the need to develop
21 information. I think we need to work together to define
22 what that would be.

23 In terms of, you know, implementing our Federal
24 Power Act and ESA obligations, the process is more expedited
25 when we have the information that we need to implement our
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1 mandates. So if the PAD has an agreement up front, the
2 agreed-upon information up front, that helps us to be able
3 to get our job done faster as well.

4 MR. KONNERT: Sarah, do you want to respond to
5 something that Melanie said?

6 MS. HILL-NELSON: Well I would just like a little
7 bit of--you know, again in our case we didn't have any study
8 requirements. And I'm thinking about an existing reservoir.
9 And when you reference standard studies, it would be helpful
10 for me to know, you know, what kind of "study" are you
11 thinking of that would be a "standard study"?

12 And then you talked about--is that study just
13 gathering information? I mean, through part of the PAD
14 you're gathering all this existing data and presenting this
15 base of knowledge of what we know about this project site
16 and those reservoirs. And I don't know that that's
17 necessarily a "study," that's more sort of information
18 gathering and presentation that's done on behalf of the
19 developer.

20 So I'm curious sort of what sort of standard
21 studies should people expect to be asked to complete?

22 MS. HARRIS: And I think that's something that,
23 you know, certainly we'd need to have a larger conversation
24 about. But, you know, because it's an existing dam we still
25 might not know specifics of the flows from that particular

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1 project. We might not know about the fish populations above
2 and below the projects. And there could still be
3 information we don't know, even though the existing dam is
4 already there, that would be useful to know going forward if
5 you're talking about adding hydro.

6 If you're adding hydro to an existing dam, you
7 could have some downstream impingement and entrainment
8 issues that, you know, we might need to know what species
9 are present in the reservoir as kind of the information
10 needs.

11 MS. HILL-NELSON: That's helpful. Thanks.

12 MR. KONNERT: Okay. Great. Brian?

13 MR. FITZGERALD: Thank you. Brian Fitzgerald.

14 First of all, for context, in New England most of
15 these existing dams that people are looking at for
16 hydropower are old mill dams. And these may be in river
17 reaches for which there is very little existing information.

18 So studies may be necessary in order to, you
19 know, provide the information that the state and federal
20 agencies need to certify or license the project, approve of
21 the project. And these are very site- and project-
22 specific.

23 So it's really hard to sort of generalize on this
24 question. But I guess if there is very little existing
25 information and there is a need for information to get
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1 through the process, then there will be a need for studies
2 of some sort to gather that.

3 And it would seem particularly if there's going
4 to be extensive studies that that sort of precludes the
5 possibility of getting through the process in just two
6 years, particularly if there are extensive field studies.

7 So I think that's going to sort out when people
8 are developing these projects, or thinking about these
9 projects and trying to decide, you know, should we opt for
10 the two-year approach, or should we just, you know, go to
11 the standard TLP or ILP, and that will sort itself out.

12 I guess, yeah, I think that covers it.

13 MR. KONNERT: Sarah?

14 MS. HILL-NELSON: Well just to continue this
15 conversation, to flesh it out, like with these old mill dams
16 what you're saying is, so say some existing dam is there and
17 you'd assume that there's already some sort of mechanism for
18 bypassing, right, where water flows are going over or by the
19 dam. Or if someone were not altering those flows, I mean I
20 can see as a developer that's where you might be worried
21 that someone would say: Well, you know, okay, well we don't
22 know very much about the fish that are in this reach. Even
23 though you're not altering the flows, or you're not changing
24 the existing regime in any way, because you're going to make
25 some change to the dam then we do need to have this study?

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1 But I mean, would you see the need for a study if
2 they weren't going to alter the pattern of flow at all?

3 MR. FITZGERALD: No. Not at all. And in fact,
4 we have certified some projects that, you know, they were
5 coming in, they were proposed to be run-of-river; it was a
6 very short bypass reach; and they agreed up front to bypass
7 flows that meet our standards. So there was no study
8 necessary for--you know, no bypass habitat study was
9 necessary.

10 You know, one issue that, you know, we're
11 concerned about in some of these are, since under their
12 current mode of operation basically they're just sitting
13 there and all the water is going over the spillway,
14 diverting water through the units can have an effect on
15 downstream dissolved oxygen. And in those cases, we have
16 conditions subsequent that they will address that once the
17 project is operating, because you can't really deal with it
18 ahead of time.

19 So it's really tailored to, you know, as I said,
20 they're very project- and site-specific. And we see no need
21 to conduct studies if we don't need the information.

22 MR. KONNERT: Okay. Thanks. Ann, did you have
23 something you wanted to say?

24 MS. MILES: I guess I do have one thing. I think
25 it's to Melanie, because you've talked several times about
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1 the standard info needs, and I wondered if you were feeling
2 similar to Brian that in specific instances, you know, you
3 might not need information?

4 I think we're seeing--well, we're seeing a lot of
5 applications at core dams. And it's sort of the same type
6 of things that people need because the flows are not being
7 changed. Some applicant may decide just to put in screens
8 for the downstream, if there's a downstream fishery issue,
9 and not do studies. And I'm wondering, to me that takes a
10 conversation rather than a set standard of information. So
11 I'm curious about the agency's thoughts. Because I know you
12 all have talked together about that, and what your thinking
13 is in that regard.

14 MS. HARRIS: Yeah, I think there certainly could
15 be cases where we wouldn't need studies. I mean certainly
16 if there's an agreement up front we would think there could
17 be some entrainment going on, you know, we've read your
18 standard guidance on screening criteria, and we're agreeing
19 up front to putting this screening. I think, sure, that
20 could work in those situations.

21 I think it's hard to say in the abstract would
22 that be true in every project, no, but certainly I think
23 that's within the realm of what could happen on a project.
24 Does that help?

25 MS. MILES: Yes.

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1 MR. KONNERT: John Warner?

2 MR. WARNER: I guess to address Ann's question a
3 little bit, I have trouble being sure what the question was
4 aimed at, but interpreting that the question was asking
5 whether the PAD should include an agreement, you know,
6 between the applicant and the agencies and other parties on
7 what additional information and studies would be provided
8 after filing, then my answer would be, yes, it definitely
9 should have that right up front, what's agreed to. And I
10 think that would help get past all those other bullets I
11 read through.

12 And I think that it is important in that case,
13 more what Ann is saying, that every project is different.
14 And I think if you can get an agreement on what is necessary
15 that relates to that project and the impacts of that
16 project, that that would be the best approach rather than to
17 come up with a list of every project has to have a flow
18 study, or everybody has to have a water quality monitoring
19 plan, because I don't think they're necessary in all cases
20 and every project has unique circumstances.

21 MR. KONNERT: Melanie?

22 MS. HARRIS: I agree I think every project has
23 unique circumstances, but I think it's still useful as a
24 starting point for discussion to have a standard list of
25 what the kinds of information needs are likely to be for
26

1 that kind of project. I think it is still useful to bring
2 that to the table and have that in the PAD.

3 MR. KONNERT: Okay, we're going to move forward
4 with the next question for the panel, and this one is for
5 John Seebach, John Warner, Dan, and Brian.

6 Are there certain types of issues that should
7 preclude a project from being eligible for a two-year
8 process? John Seebach, do you want to start?

9 MR. SEEBACH: Yeah, I addressed some of these
10 earlier. I don't think that these things--I think some of
11 them--here's what I'm struggling with.

12 In the statute Congress actually directed FERC to
13 come back with a set of criteria--I'd have to look at
14 exactly what, I pulled the statute to take a look at it
15 here--yeah: "Develop criteria for identifying projects
16 featuring hydropower development at non-powered dams and
17 closed-loop pumped storage projects that may be appropriate
18 for licensing within a two-year process."

19 So it's in the statute that some projects
20 probably aren't appropriate for a two-year process. And
21 that's not to say that we shouldn't try to find a way to
22 make it possible to license projects more quickly. Good
23 policy is good policy anywhere.

24 But I also think that we need to be careful about
25 not creating expectations that a project will be done in two
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1 years. And so something like the presence of Endangered
2 Species, it's just really difficult to see how that's going
3 to fit into two years. It doesn't mean that it's
4 impossible, but it means that it's difficult.

5 And I think that's the key thing that needs to be
6 communicated, not so much that you're not eligible for this
7 process, but that here are the things that you have to do,
8 and some of these things may not--simply may not fit.

9 I had another point but I seem to have forgotten
10 it, so I--

11 MR. KONNERT: We'll come back to you if you think
12 of it. John Warner?

13 MR. WARNER: I hate to be redundant, but I've
14 pretty much addressed all the criteria that I would probably
15 find either necessary, or maybe the inverse was those that
16 would preclude development in my comments on 4.1.

17 MR. KONNERT: Dan?

18 MR. LISSNER: No.

19 MR. KONNERT: Okay.

20 (Laughter.)

21 MR. LISSNER: That was unnecessarily glib. I
22 will add to that. If we're talking about--

23 (Laughter.)

24 MR. LISSNER: --projects that are run-of-river at
25 existing dams that don't involve substantial modifications

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1 to the existing structure or the existing impoundment, and
2 by "substantial" I understand we're talking about a judgment
3 call, then I believe they should be eligible for the two-
4 year process.

5 And that's not making a comment on the substance
6 of the project that comes out that may or may not be
7 licensed at the end. That project may be licensed in a way
8 that is constrained by FERC upon review in its conduct of an
9 environmental analysis. That project may require additional
10 protection, mitigation, and enhancement measures, post-
11 licensing activities that are agreed to and incorporated in
12 to address those effects. I'm not commenting that projects
13 should come out clean and unscathed at the end of two years
14 categorically.

15 I'm saying from a process standpoint, where
16 projects are at existing dams and run-of-river, I don't see
17 any reason categorically why those projects should not be
18 able to move through this gauntlet within two years.

19 MR. KONNERT: Thanks, Dan. Brian?

20 MR. FITZGERALD: I guess to answer the question
21 specifically, I think John hit it that, you know, they
22 should meet the criteria.

23 I guess if I were to exclude projects from even
24 being considered, it would be if there was a proposal to
25 increase the amount of flow regulation, particularly
26

1 downstream, but also excessive flow regulation in the
2 project bypass.

3 MR. KONNERT: Okay, thanks. John, you thought of
4 your other part?

5 MR. SEEBACH: I did. Thank you.

6 First I want to point out that even from the "no"
7 answer there is still criteria. I mean, you said run-of-
8 river and no substantial modifications. So there are some
9 projects where it won't work.

10 The additional thing that I wanted to add is a
11 failure on the part of the developer to meet the
12 requirements set forth in the process and the deadlines set
13 forth in the process. That in itself should preclude a two-
14 year process.

15 So if you don't meet the timelines, and you don't
16 meet the information needs, then you do not have a right to
17 have your application processed in two years because, you
18 know, you can't run out the clock.

19 MR. LISSNER: I concur with that.

20 MR. KONNERT: Okay. All right, Ann.

21 MS. MILES: No one has mentioned anadromous fish.
22 I don't know if that's implicit in fish passage, but I'm
23 curious. Any thoughts on that?

24 MS. HARRIS: Melanie Harris, NOAA. I previously
25 mentioned that I thought projects might not be suitable for
26

1 this process. And sort of the flip side I guess of what I
2 said earlier is there are some areas we think of as ESA
3 species that are certainly from our perspective anadromous
4 fish, areas of critical habitat. And even for non-ESA
5 listed anadromous fish, if there are issues that would be
6 really substantially difficult to resolve, significant
7 issues, I think that could be an issue where you may not fit
8 with a two-year process.

9 MR. KONNERT: Go ahead, John.

10 MR. WARNER: This is John Warner. To respond to
11 Ann's question, I guess I sort of agree with Melanie but I
12 think just the presence of anadromous fish, or migratory
13 fish, and we include American eel in New England, we could
14 just pretty much write them off, 90 percent of the existing
15 dams, as being eligible.

16 And, you know, in most cases we're looking at
17 providing either protection or upstream passage measures.
18 If those are agreed to by an applicant, you know, whether
19 it's through this process or an exemption, then it doesn't
20 delay anything.

21 So the presence of the fish wouldn't, you know,
22 really be a drop-dead criteria.

23 MR. KONNERT: Go ahead, Chris.

24 MR. MAYNARD: Well in Washington anadromous fish
25 are big, and one additional issue for us would be the

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1 potential for anadromous fish to be at a dam, because
2 there's a lot of projects that are putting fish up above
3 dams, or planning to. So there may not be fish there now,
4 or when a project is proposed, but there could be 10 years.
5 And then we wouldn't want to have the flow or the design of
6 the new project, or of the hydropower part of the dam, have
7 to change to have those fish go over that dam in turn.

8 MR. KONNERT: All right, I'm going to open it up
9 to the audience. Does anybody have any thoughts on the
10 previous two questions? Jeff?

11 MR. LEAHEY: Jeff Leahey, NHA. Just to go back
12 to the studies' issue a little bit and the information
13 needs, I think it is NHA's feelings and thoughts on this
14 that, looking at the types of projects that we're looking
15 at, that study needs and information needs should
16 potentially be more targeted. And that, as Sarah put it and
17 I think Dan put it, you know, we're looking at the
18 incremental impacts of adding generation to an existing
19 facility that has an existing flow regime which in most
20 cases applicants are not looking to change.

21 And so in that case I think we should probably
22 argue that in some case--and there will always be exceptions
23 where additional information may be needed, additional
24 studies need to be done. I'm not arguing that. I am just
25 sort of saying that I think there might be a need for limits
26

1 and, yes, also a need for maybe higher thresholds to be
2 established for the need for additional information that
3 doesn't come out of the existing information that is
4 available at the time that applicants are being made.

5 This is not necessarily a NHA position, but
6 something that the industry has been talking about is can we
7 be looking at this from the perspective of what do you need
8 to know? And what are the impacts of the incremental
9 impacts of the hydro generation itself? And looking at
10 that, and what are your study needs and your information
11 needs focused on the incremental impacts to the resources
12 based solely on the adding of the generation to the
13 project?

14 MR. KONNERT: Thanks, Jeff. John?

15 MR. KATZ: One question I'm hoping folks can help
16 with in their written comments--I supposed I'm not asking
17 them to come up with any brilliant answers at the moment--
18 is, after having listened to the last couple of hours of
19 discussion, is are we talking about a new process here? Or
20 are we talking about doing the existing processes in better
21 ways?

22 Because I guess I haven't heard really anything
23 that says the TLP won't work. What I've heard is there's a
24 need to work together, to get together early, to identify
25 issues and so on, and I don't minimize that because one of
26

1 the more positive developments over the last few years has
2 been the Hydro Reform Coalition working with NHA to, you
3 know, within existing processes to come up with ways to do
4 things that worked for everybody.

5 So this is just an ask for folks when they're
6 doing their comments is to try to identify: Are we looking
7 at a new process? Or are we looking at doing what we do
8 better?

9 I mean, you know, we have the A students like the
10 person with the tent card up right here--

11 (Laughter.)

12 MR. KATZ: --and I presume your answer is going
13 to be, hey, the process worked for me. You know, but it
14 doesn't work for everybody. But are there--you know, is
15 there a class of categories that, or a class of projects
16 that if we do what we do better, if we really work hard at
17 communication and early development, and early working out
18 of issues, and early working with stakeholders, that, you
19 know, don't require a third LP, or a fourth LP, whatever it
20 is a project a fourth LP, but maybe it would work with the
21 TLP with just an extra emphasis on certain aspects of it.

22 So that's what I'll be interested in hearing.

23 MR. KONNERT: Sarah?

24 MS. HILL-NELSON: I'm supposed to keep it to
25 paper, I guess, but I do--I would like to articulate what
26

1 I'm hearing at the table, and people can please feel free to
2 tell me if I've misheard.

3 But what I'm hearing people say is that we're
4 looking at basically a TLP on steroids. And as John Seebach
5 said, it's not your right; it's a reward that you would
6 maybe put this--when you put your PAD together, you say,
7 okay, you know, whether you have to apply for the TLP or
8 whatever, so say you want to apply for the fast-tracked
9 steroid TLP, and you go in with your PAD, and you've already
10 done all your work, and you've consulted with the agencies,
11 and you go forward in front of some kind of FERC committee
12 that says: Okay, we're rewarding you for all this hard
13 work. For the moment, you are fast-tracked, until at some
14 point something comes up that we haven't foreseen, and then
15 we graciously say, okay, I'm sorry, you have to off-ramp.

16 Or if like another agency comes up with a time-
17 blocker, then essentially FERC's clock gets to stop. Right?
18 They shouldn't be dinged for something that another agency
19 slows down. But then once they get it back in, the ball
20 back in the court, then FERC's timeline starts again and
21 FERC can say, you know, we can commit to this timeline on
22 our fast track. But again you have to keep in mind that
23 you're going to get off-ramped if something...

24 Is that fair? I'm interested in what people are
25 thinking, if I'm on the right track there?

26

1 MR. KONNERT: Go ahead, Dan.

2 MR. LISSNER: I concur with most of that, Sarah,
3 except with the caveat, a concern that the off-track--that
4 the off-tracking plan become an opportunity to create
5 controversy in order to buy more time. And those situations
6 are likely to happen, but I think we need to strictly
7 construe--and I believe it's within the capacity of these
8 existing projects, largely within that question of looking
9 at nexus to project operations in connection with study
10 requests that exist and is available there as well.

11 But I would have a concern that any time
12 controversy, or the semblance of controversy is raised,
13 everybody throws the brakes on two years and it doesn't
14 become the opportunity. I think we all have an opportunity
15 to work on this. For developers who are approaching it the
16 right way, who are engaging proactively with the
17 stakeholders, for the right class of projects, the
18 presumption should be this is something that can work.

19 MR. KONNERT: Let me have John speak first, and
20 then I'll go to you at the microphone.

21 MR. SEEBACH: Well I agree with most of what
22 Sarah and Dan said with the caveat that you also don't want
23 the process to become the train barreling down on you, if
24 there's legitimately something that you need to address
25 before it wrecks.

26

1 There needs to be some flexibility in there and
2 some understanding that two years may not always work. I
3 look at this as an opportunity to bring more students up to
4 the A level. It's probably because I grew up in a house
5 with two teachers.

6 (Laughter.)

7 MR. SEEBACH: But I think that what FERC can do
8 here in cooperation with some of the agencies is to lay out
9 a process where, if a developer follows this process
10 diligently, they are likely to get their application--sorry,
11 they're likely to get a license in two years. It's like
12 going to the teacher at the beginning of the term and
13 saying: well what do I need to do to get an A in this
14 class? And the teacher usually tells you, well, you need to
15 study hard, and sort of lays out the things that you would
16 be required to do. And I think that articulating that
17 clearly and creating some certainty that if you do these
18 things right--it is, I think, using the existing process
19 rather than creating an additional process, but it's clearly
20 defining maybe through a set of best-practice timelines, or
21 just best-practices, how to do that process in a way that's
22 likely to lead to success.

23 MS. HORN: I'm Joan Horn from the National Park
24 Service. I just wanted to mention a couple of additional
25 issues that I haven't heard mentioned today that perhaps
26

1 would fit into the criteria.

2 One is on recreation. If there's changes to the
3 recreation facilities, the opportunities that are there, the
4 access, that would be something that might need to lead to
5 additional study or consideration.

6 And secondly, there hasn't been any mention of
7 the potential for new transmission that would be associated
8 with adding hydro at existing structures. And that would be
9 another one that could add some time and could add some need
10 for study.

11 Of course in the PAD there is a robust
12 information requirement. And I think the answer to your
13 question, Sarah, about standard studies is, you know, what's
14 the information that the applicant was not able to develop
15 as part of the PAD, as part of that standard package? And
16 that could lead to the need for more study.

17 Thank you.

18 MR. KONNERT: Thank you. Does anybody on the
19 phone--oh, hold on. Brian, do you have something to add?

20 MR. FITZGERALD: Just to get to John's question
21 about are we looking at a new process or not, it seems to me
22 that if the advance placement developers are working with
23 the agencies before they ever even file the PAD, and
24 identify the issues, identify what information is needed,
25 get agency agreement on those points, perhaps propose

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1 mitigation, and all that information is included in the PAD
2 and that's what goes to FERC, that FERC has the discretion
3 under the current regulations to--you know, with agency
4 concurrence, to shrink some of these timeframes as we've
5 discussed, and essentially perhaps not promise but--and I
6 guess it wouldn't be a promise--but to give some assurance
7 to the developer that, you know, this project could get
8 through the process in two years.

9 And that would be under the current TLP. I think
10 that's considerably more challenging if it's an ILP, and
11 perhaps impossible, but certainly under the TLP that should
12 be doable. And maybe that's the way to proceed and identify
13 what those best practices are and what the developers should
14 be doing in order to make the process work better and
15 faster, but still maintain a high level of environmental
16 protection.

17 MR. KONNERT: Thanks, Brian.

18 Does anybody on the phone have any thoughts on
19 these previous two questions?

20 OPERATOR COREY: Erin Ragozzi, your line is open.

21 MS. RAGOZZI (By Phone): Thank you. I'm Erin
22 Ragozzi again with the California State Water Resources
23 Control Board. I just wanted to take a second to talk about
24 the study discussion that went on previously.

25 I don't think there's a reason to require a study
26

1 just for a study's sake. But there are possibilities of
2 when a study would be necessary because there isn't
3 sufficient information available at the time.

4 So I think when a project comes in with the PAD,
5 or before the PAD, when you're having those discussions, it
6 is important to look at what the existing information is and
7 determine whether or not the flows are appropriate.

8 Just because you have a non-powered dam doesn't
9 mean that there are appropriate flows to protect beneficial
10 uses. And so there is the possibility that there might need
11 to be a study to look at what those appropriate flows would
12 be to protect beneficial uses.

13 Thank you.

14 MR. KONNERT: Thank you. I'm assuming that's the
15 only question or comment from the phone?

16 OPERATOR COREY: That is correct.

17 MR. KONNERT: Thank you. Well the next question
18 really is for everybody, not just the panel members;
19 everybody in the audience. And that is:

20 Are there any developers that will be ready to
21 begin testing a two-year process by February 5th, 2014,
22 which is the date required for us to begin those pilot
23 projects in the Act.

24 Dan?

25 MR. LISSNER: Yes.

26

1 (Laughter.)

2 MR. LISSNER: Provided that the outcome of the
3 licensing process is a traditional FERC license and not a
4 different creature of statutory/regulatory creation.
5 Absolutely.

6 MR. KONNERT: Okay. Nobody else wants to jump
7 up? Does anybody on the phone want to chime in on this one?

8 OPERATOR COREY: Kelly Sackheim, your line is
9 open.

10 MS. SACKHEIM (By Phone): Thank you very much. I
11 am Kelly Sackheim with KC Hydro that has a number of
12 preliminary permits, including a pending application for
13 preliminary permit. It's been assigned the number P14521.
14 It is at the Corps dam at the Falls on the Noose River just
15 north of Raleigh, North Carolina. It is an application that
16 follows a nearly three-year study under preliminary permit
17 by the City of Raleigh.

18 The Corps's Wilmington District has been very
19 cooperative, and the state has indicated that the studies
20 that it would require of the--to assess the fisheries
21 situation could be concluded in one year. I think this
22 might be a good project to jump in in February of '14 to
23 begin testing a two-year process.

24 MR. KONNERT: Thank you, Kelly. Does anybody
25 else have anything they want to say? Ann?

26

1 MS. MILES: I just wanted to say, Dan, you've
2 mentioned a couple of times the idea that it might be a
3 shortened license of some sort, and I don't think that is--I
4 don't think I've heard that from anyone. I think it's using
5 the term "pilot," which I think some people may confuse with
6 the pilot process that we have for the tidal and wave
7 projects, but it's my understanding, and if anyone thinks
8 differently I'd like to know, is we're doing a pilot for a
9 typical standard license for projects at existing dams and
10 closed-loop pumped storage projects.

11 MR. KONNERT: Thank you, Ann.

12 MR. ADRIAN: John Adrian again from Duncan
13 Weinberg. The Grand Coolee Hydroelectric Authority believes
14 it also has a project that might be appropriate for the
15 pilot project, and it would be up and ready. We would be
16 interested.

17 MR. KONNERT: All right. Thank you.

18 Okay, if there's no other comments I'm going to
19 move on to our closing remarks.

20 Thank you again to everyone for participating in
21 the workshop today. I believe the input that we've received
22 was very imformative and will help us in determining the
23 feasibility of a two-year process and what needs to happen
24 to make it work.

25 As specified in our notice issued on October 8th,
26

1 written comments are due by November 21st. Guidance on how
2 to file written comments are included in that notice. A
3 transcript of this meeting will be made available under the
4 docket for this proceeding, which again is AD13-9-000.

5 I will now--any closing remarks?

6 COMMISSIONER MOELLER: No, thank you.

7 MR. KONNERT: Well thank you everyone. Our
8 workshop is now adjourned.

9 (Whereupon, at 3:25 p.m., Tuesday, October 22,
10 2013, the workshop in the above-entitled matter was
11 adjourned.)

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