



FERC FUNDAMENTALS

May 2008



WHO IS FERC AND WHY ARE THEY HERE?





Federal Energy Regulatory Commission



- Independent Regulatory Agency
- Five member Commission
 - Appointed by President of the United States
 - Confirmed by the Senate





Goals

- Energy Infrastructure—promote development of a strong infrastructure
- Competitive Markets—support competitive markets
- Enforcement—prevent market manipulation



What Does FERC Regulate?



- **Natural Gas Industry**
 - Interstate gas pipeline and LNG construction and oversee related environmental matters
 - Interstate transportation rates and services



- **Electric Power Industry**
 - Interstate transmission rates and services
 - Wholesale energy rates and services
 - Corporate transactions and mergers
 - Transmission line backstop authority



What Does FERC Regulate? cont.

- **Oil Pipeline Industry**

- Interstate transportation rates and services of crude oil and petroleum products



- **Hydroelectric Industry**

- Licensing of nonfederal hydroelectric projects
- Oversee related environmental matters
- Inspect nonfederal hydropower projects for safety issues





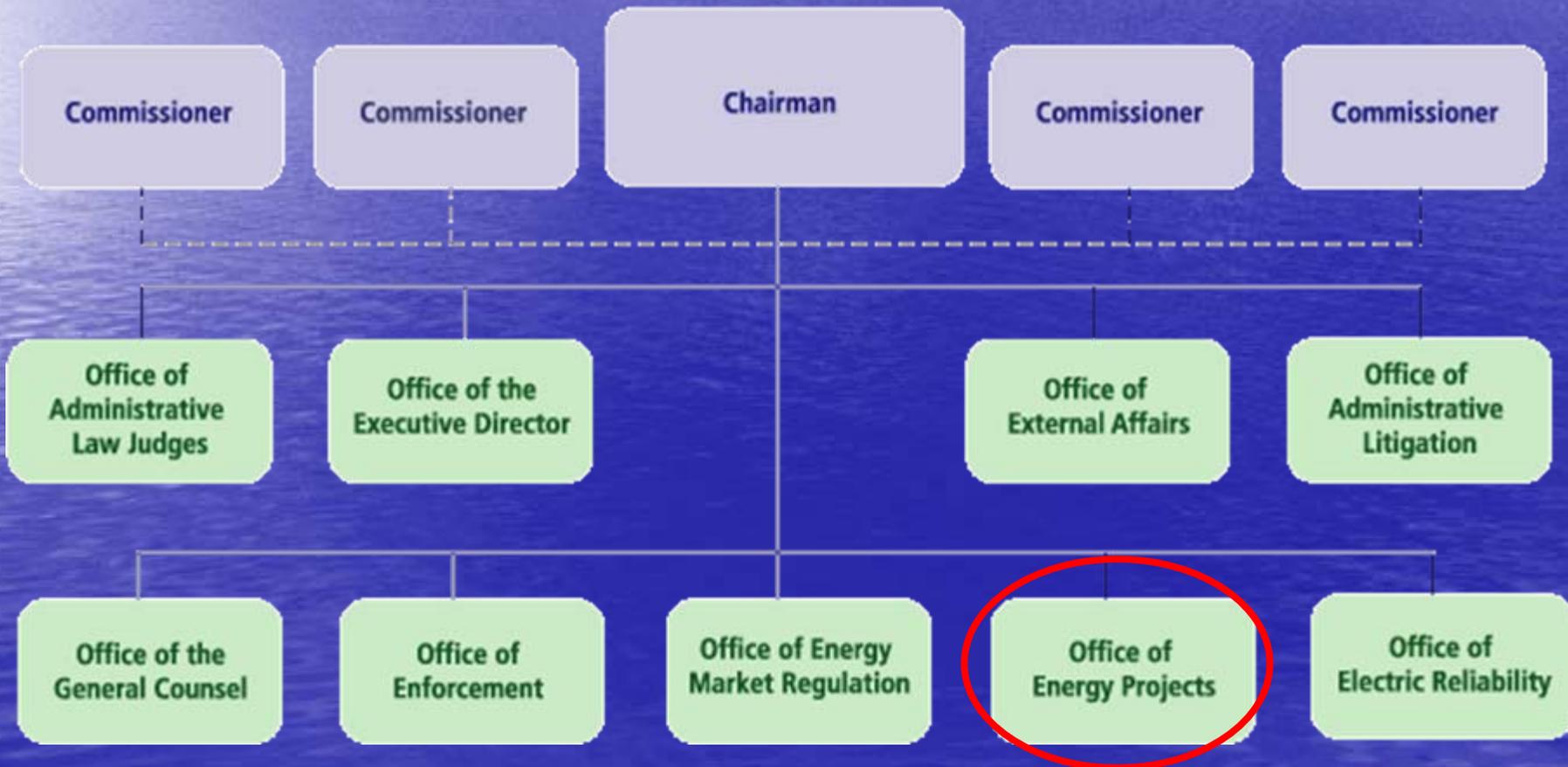
Funding

- Recovers 100% of authorizations
 - Annual charges
 - Filing fees
 - Use of federal lands/dams

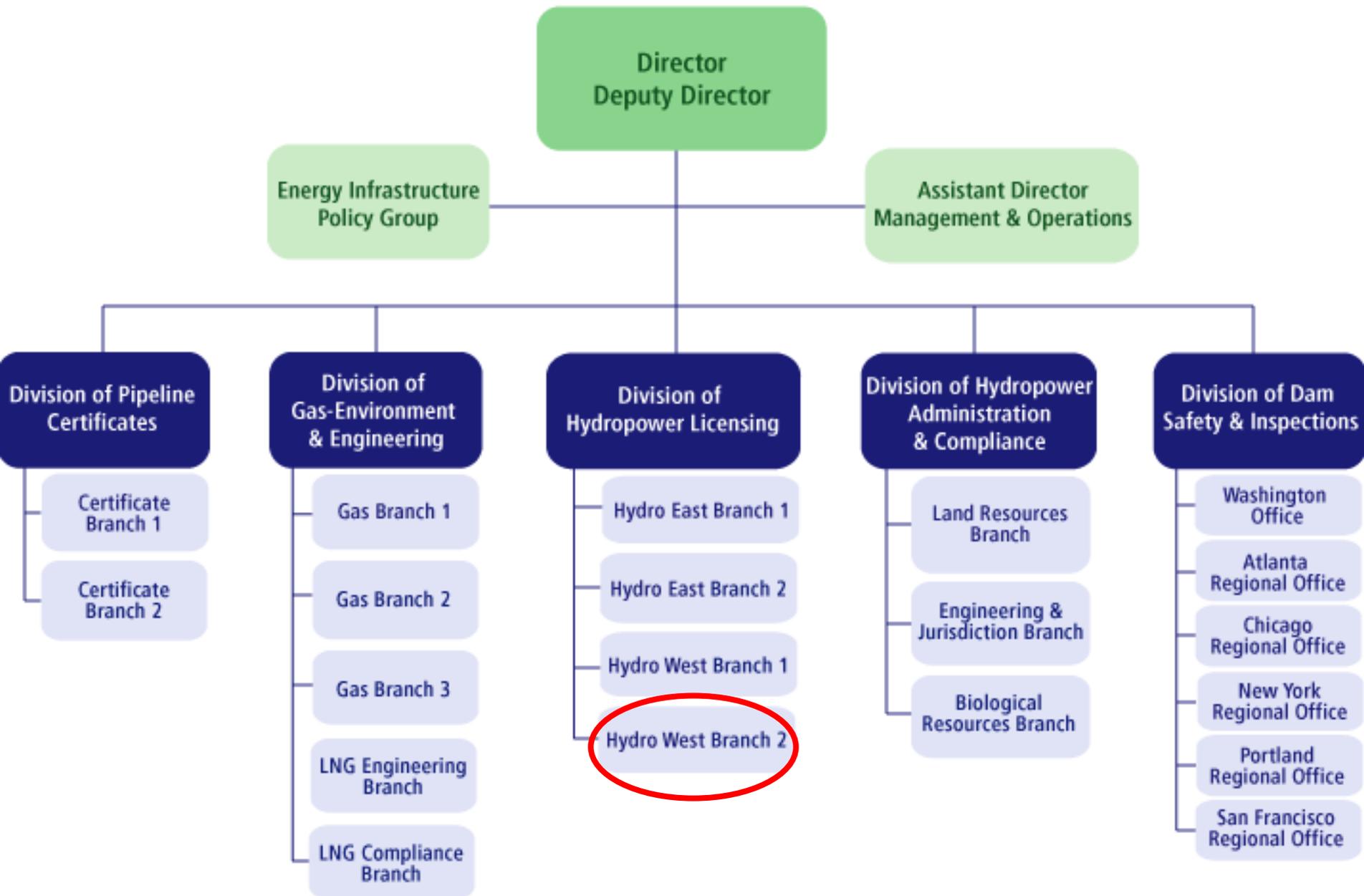


The Commission

Federal Energy Regulatory Commission

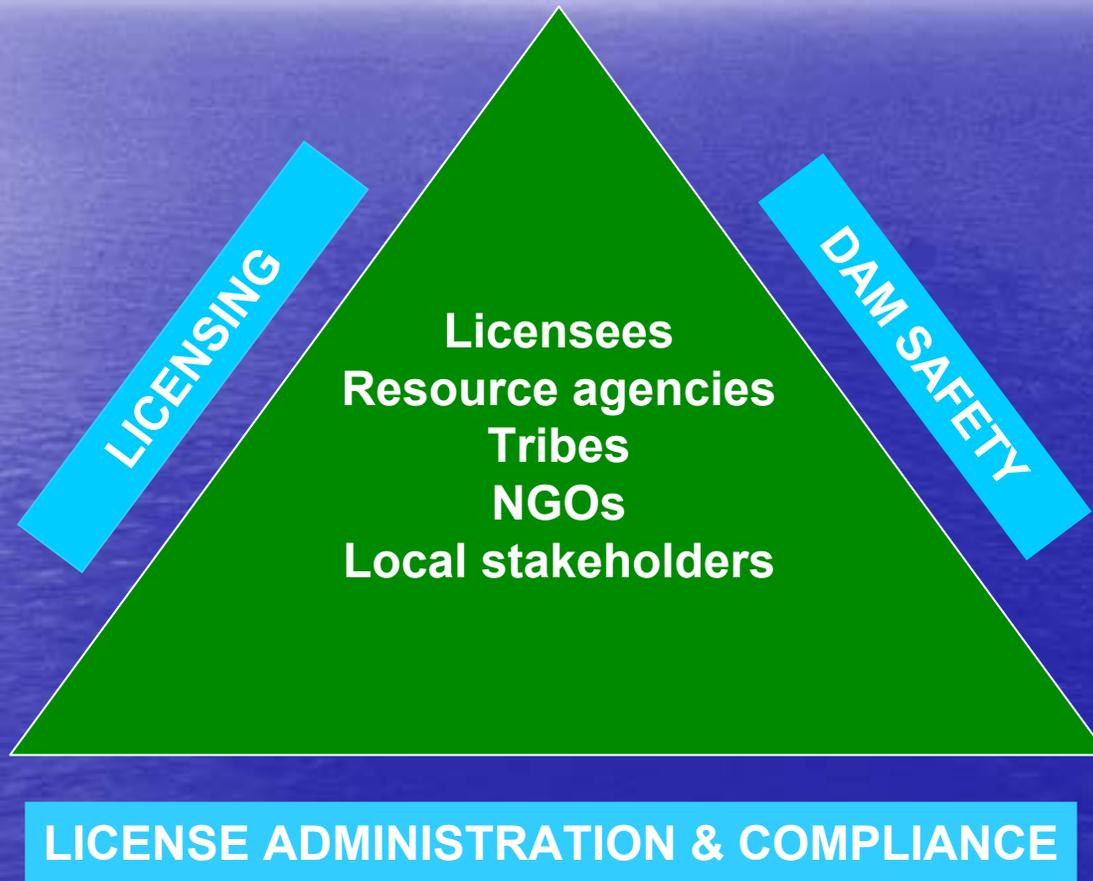


Office of Energy Projects (OEP)





HYDROPOWER PROGRAM





Division of Hydropower Administration and Compliance



- Conduit exemptions and preliminary permits
- Declaratory orders
- License amendments
- Jurisdictional determinations
- Headwater benefits
- Compliance and Penalties
- License transfer
- Complaints
- License surrender



Division of Dam Safety



- Review of Project Designs
- Review of Plans and Specifications
- Convene Board of Consultants
- Quality Control and Inspection Prog.
- Construction Inspections
- Operation Inspections (Post-Construction)
- Part 12 D Safety Inspections
- Emergency Action Plans
- Incident Reporting



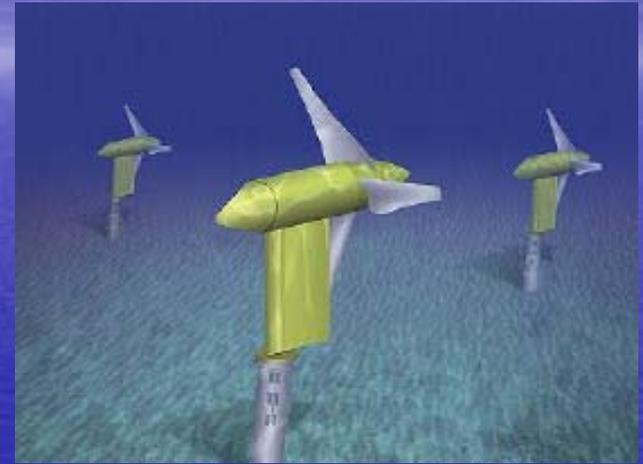
Division of Licensing



- Licenses (pumped storage, conventional)
- Exemptions (existing dams 5 MW or less)
- Kinetic Energy Projects



Kinetic Energy Projects (Current, Tidal, Wave, In-river)





HYDROPOWER REGULATION





History

- 1920--Federal Water Power Act
- 1935--Federal Power Act
- 1977--DOE Organization Act
- 1978--Public Utility Regulatory Policies Act
- 1986--Electric Consumers Protection Act
- 1992--National Energy Policy Act
- 2000--Energy Act of 2000
- 2005—Energy Policy Act of 2005



FERC Jurisdiction

- Located on a navigable waterway
- Occupies lands of the United States
- Affects interstate or foreign commerce
- Utilizes surplus water from a federal dam





Precluded by Law

- National Parks and Monuments
- Wilderness Areas
- Wild and Scenic Rivers
 - “on or directly affecting”
 - direct and adverse effect on values
 - unreasonably diminish values
- Special Acts



Type of Actions

- Preliminary Permits
- Exemptions Conduit
 - Small hydropower ("5-megawatt")
- Licenses



Preliminary Permits

- Maintains priority of application for license while the permittee studies the site and prepares to apply for a license
- Issued for up to 3 years
- Does not authorize construction
- Requires periodic reports on the status of studies
- Not necessary to obtain a permit in order to apply for or receive a license



Exemptions (in perpetuity)

- Small hydropower projects
 - 5 megawatts or less
 - Built at an existing dam, or utilize a natural water feature
- Conduit exemptions
 - 15 megawatts or less for non-municipal and 40 megawatts or less for a municipal project
 - Conduit constructed primarily for purposes other than power production
 - Located entirely on non-federal lands



Licenses

- Major (>1.5 MW)
- Minor (<1.5 MW)
- Original—50 years
- New (relicense)—30-50 years



Relicense Terms

- 30 years—no or insignificant construction, redevelopment, or environmental expense
- 40 years—moderate changes or expenses
- 50 years—substantial changes or expenses
- Other—synchronize expiration dates

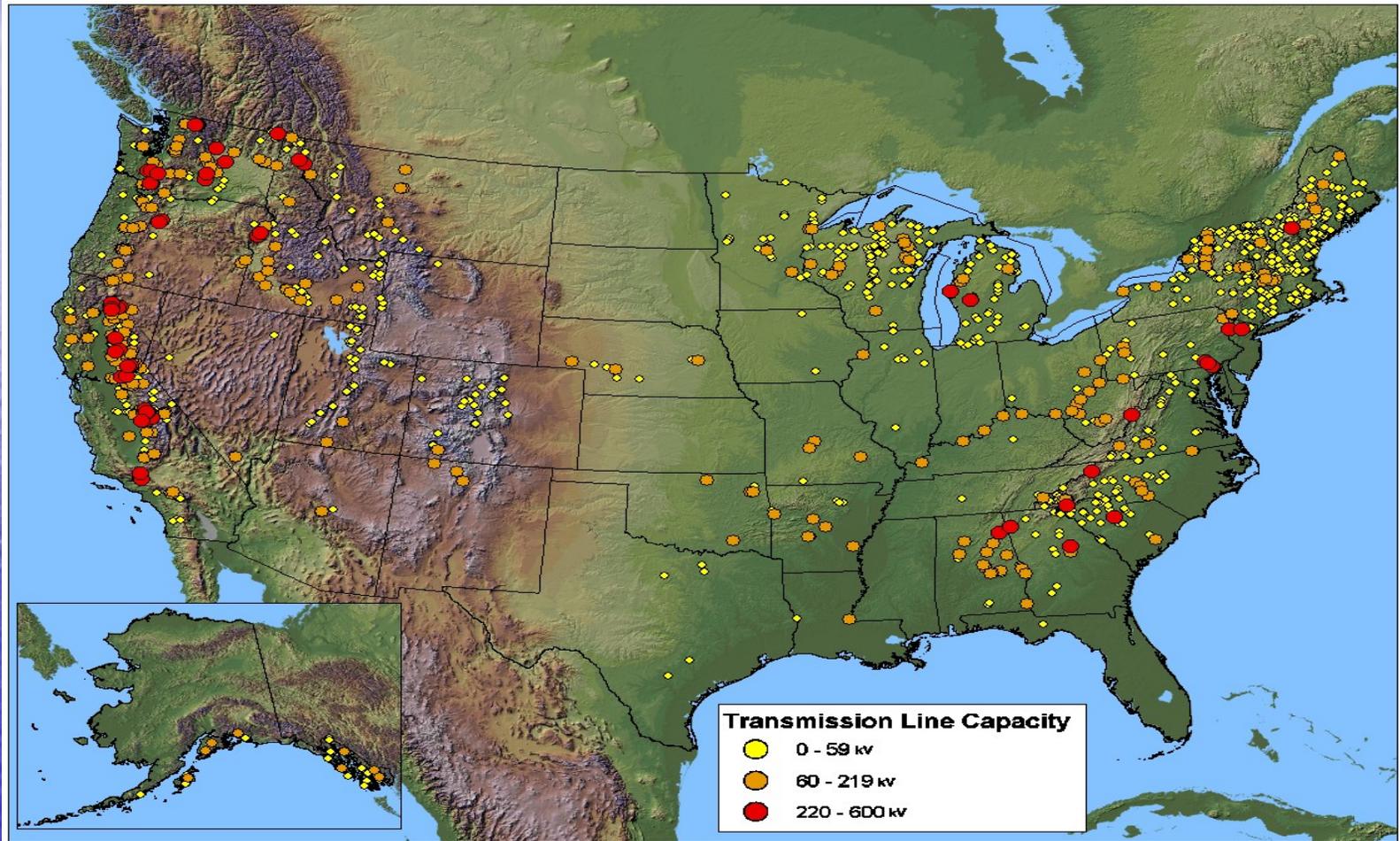


FERC Statistics

- ~1,025 Licensed Projects
 - 55% less than 5 MW
- ~ 620 Exempted Projects
 - 97% less than 5 MW
- ~50,000 Megawatts
 - 56% of Nation's hydropower
 - 6-7% of total generation capacity
- ~2,600 dams

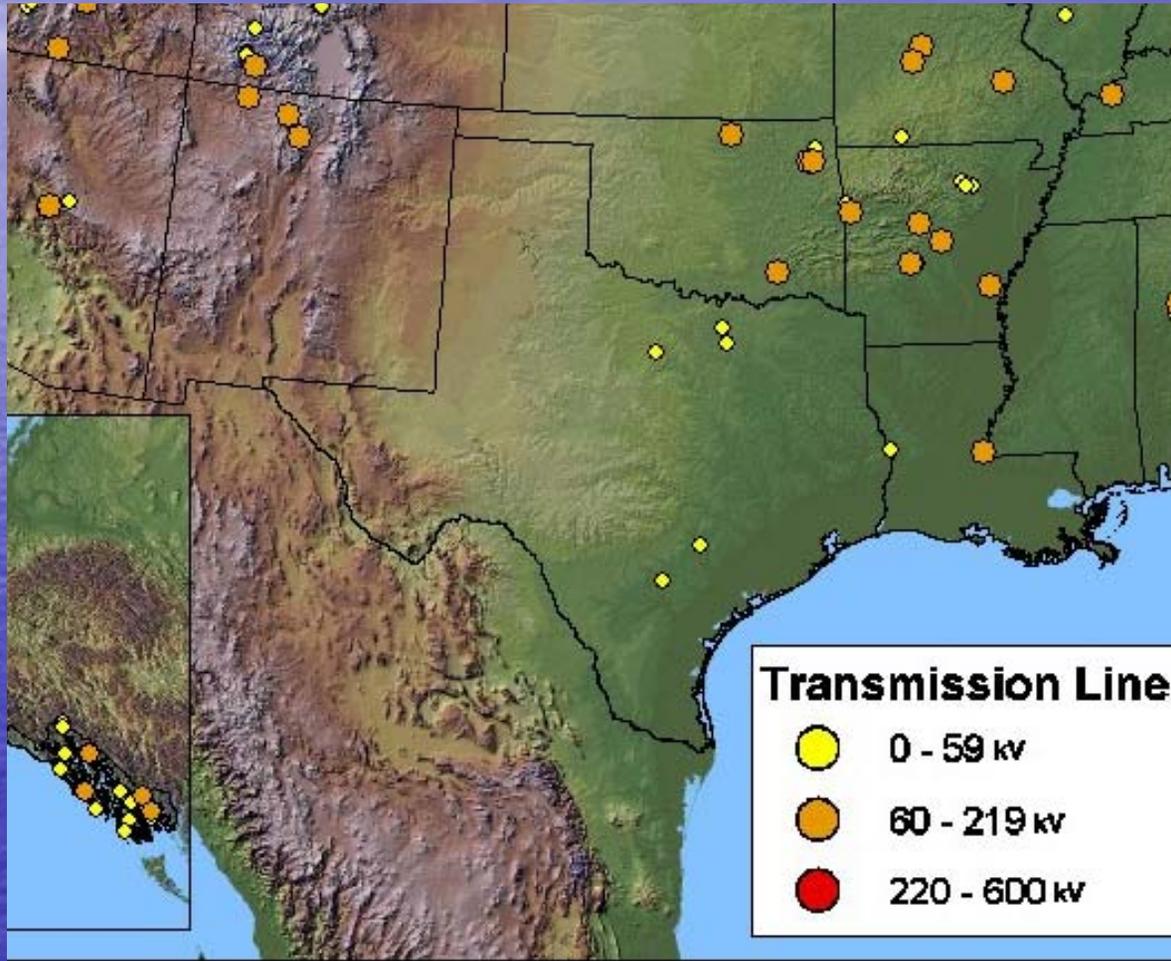


Hydropower Projects Regulated by FERC





Texas/Louisiana





Texas Projects

- 6 licensed projects
 - Canyon Dam, Gonzales, Lewisville Dam, Morris Shepard, Ray Roberts Dam, Toledo Bend
- 3 exempted projects
- 3 active preliminary permits
 - City of Corpus Christi
 - Lake Livingston
 - Medina Dam





Louisiana Projects

- 2 licensed projects
 - Sidney A. Murray (expires 12/2031)
 - Old River, 192 MW
 - Toledo Bend (expires 9/30/2013)
 - Sabine River, 86 MW
- 5 active preliminary permits
 - Red River Lock and Dams 1-5





STATUTORY PROCESSES





Important Statutes

- Federal Power Act
- National Environmental Policy Act
- Clean Water Act
- Endangered Species Act
- National Historic Preservation Act
- Federal Land Management Policy Act
- Wilderness Act



Federal Power Act

- Section 4(e)—land management conditions
- Section 4(e)/10(a)--balancing
- Section 10(a)(1)—comprehensive plans
- Section 10(j)—fish and wildlife recommendations
- Section 18—fishway prescriptions



Land Management Conditions [Section 4(e) of FPA]

- Must not interfere or be inconsistent with reservation purposes (e.g., National Forest)
- Subject to conditions necessary for adequate protection and utilization of the reservation
 - Mandatory
 - Alternative conditions can be filed



Balancing

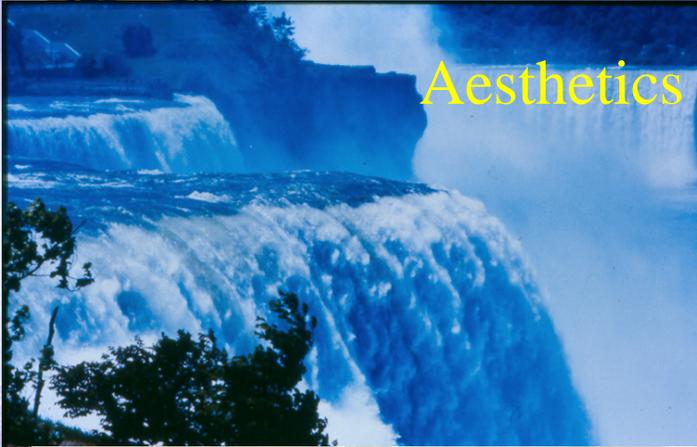


4(e)--Equal consideration

10(a)--Best adapted to comprehensive plan



Typical Environmental Considerations



Aesthetics



Wildlife



Water quality



Fisheries



Recreation



Cultural

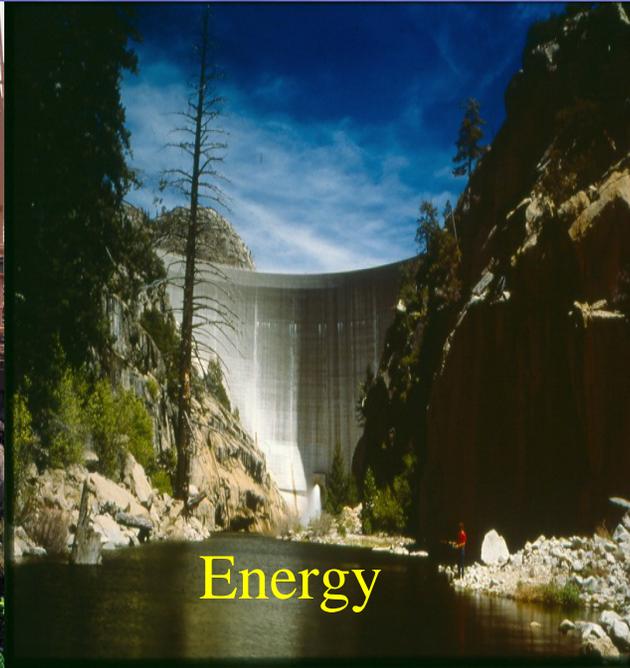




Typical Developmental Considerations



Navigation



Energy



Water Supply



Flood Control



Irrigation



Comprehensive Plans [section 10(a)(2) of FPA]

- Commission must evaluate consistency
- Plans must:
 - be a comprehensive study of one or more of the beneficial uses of a waterway or waterways
 - specify the standards, the data, and the methodology used
 - be filed with the Secretary of the Commission

<http://www.ferc.gov/industries/hydropower/gen-info/licensing/complan.pdf>



Fish and Wildlife Agency Recommendations [Section 10(j) of the FPA]

- Federal and state fish and wildlife agencies provide recommendations
- Must be specific measures to protect, enhance, or mitigate fish and wildlife resources affected by the project
- Include unless inconsistent with FPA or applicable law
- Attempt to resolve inconsistency (e.g., meeting)
- Order findings
 - Final inconsistency determination
 - License conditions would adequately protect fish and wildlife



Fishway Prescriptions (Section 18 of the FPA)

- Departments of Commerce and Interior
- Reservation of authority
- Mandatory
- Alternative conditions





NEPA

- Major Federal Action
 - Draft/final environmental impact statement
- Not major federal action
 - Draft/final environmental assessment
 - Non-draft EA



Cooperating Agencies

- Letter of Understanding
- Intervention not allowed
- Joint NEPA document



Clean Water Act

Section 401

- Water quality certification
 - Requested post-filing
 - State has 1 year to act
 - Mandatory conditions



Endangered Species Act

Section 7

- Environmental document serves as biological assessment
 - “not likely to adversely affect”—concurrence from USFWS or NMFS
 - “likely to adversely affect”—formal consultation
- Terms and conditions of biological opinion included in license



National Historic Preservation Act

Section 106

- Consult with SHPO and THPO
- Develop Programmatic Agreement as needed
- Develop historic properties management plan as needed



Tribal Consultation

- Tribal consultation policy
- Meet with affected tribes early
- Tribal liaison



Wilderness Act

- Commission cannot license a project located within a wilderness area
 - Section 4
 - Prohibits the establishment of power projects, transmission lines, and other facilities



Other Statutes

- Coastal Zone Management Act
 - Consistency with CZMA program
- Wild and Scenic Rivers Act
 - on or affecting
 - direct and adverse effect
 - invade the area or unreasonably diminish
- Magnuson-Stevens Act
 - Essential Fish Habitat

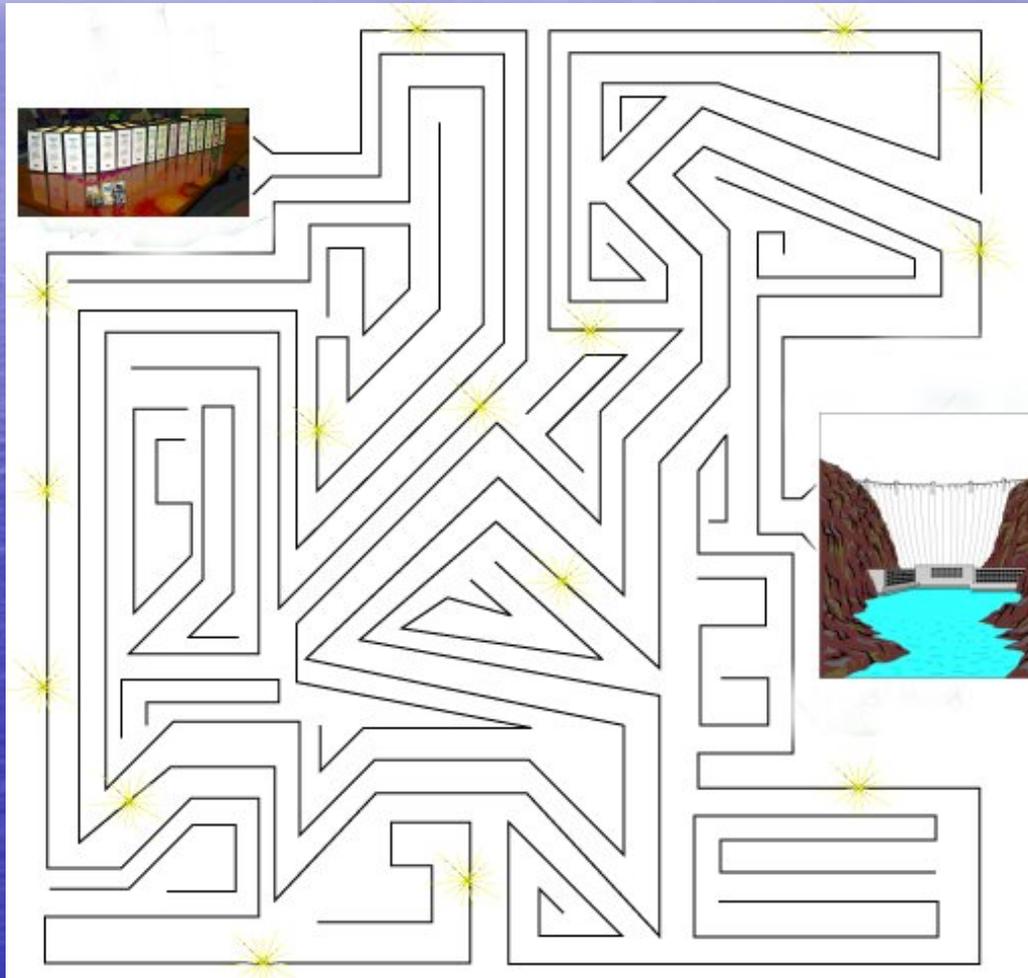


Mandatory Conditioning Authority--summary

- Federal land management conditions [Section 4(e) Federal Power Act]
- Fishway prescriptions (Section 18 Federal Power Act)
 - Federal fish and wildlife agencies
- Water quality certificate conditions (Section 401 Clean Water Act)



LICENSING PROCESSES





Licensing Processes

Traditional (TLP)

Alternative (ALP)

**Integrated (ILP)--
default**



Settlements

- Settlement policy
- Lawful and enforceable
- Substantial evidence
- Project nexus
- Reserve Commission's authority
- Measures should be specific
- Measures should be geographically close



Alternative Dispute Resolution

- Dispute Resolution Service
 - Mediation, facilitation, etc.
 - Outreach, training
 - Privileged and confidential
 - Non-decisional
- Non-decisional staff
 - Facilitation, advice



KEEPING INFORMED

- Interventions
- eLibrary
- eSubscription
- eFiling/quick comment
- Mailing List
- FERC Web Site



Interventions

- Prerequisite to file rehearing/appeal
- Will receive:
 - Commission issuances
 - Applicant's filings
 - Filings of other intervenors
- Must serve filings with applicant/intervenors

<http://www.ferc.gov/help/other-guide/intervene.asp>



eLibrary

- Access to over two million documents and over ten million pages

<http://www.ferc.gov/docs-filing/elibrary.asp>



eSubscription

- Users subscribe or 'sign up' for specific dockets and are notified via email about future correspondence.
- Users have immediate access to the correspondence or documents in eLibrary

www.ferc.gov/docs-filing/esubscription.asp



eFiling

- Electronically submit qualified documents to FERC in lieu of paper filings
 - Otherwise, original and 8 copies
- Quick comments (limited text only)

www.ferc.gov/docs-filing/efiling.asp



Mailing List

- File request with:
 - Federal Energy Regulatory Commission
Secretary of the Commission
888 First Street, N.E.,
Washington, DC 20426
- Include project no.
 - P-2305 (Toledo Bend)



FERC Web Site

- FERC

- www.ferc.gov/

Hydropower page

- www.ferc.gov/industries/hydropower/gen-info/licensing.asp



Handbooks

- Hydroelectric Project Licensing and 5MW Exemptions
- Hydroelectric Project Handbook for Filings Other than Licenses and Exemptions
 - Preliminary Permits
- Compliance Handbook

<http://www.ferc.gov/industries/hydropower/gen-info/handbooks.asp>



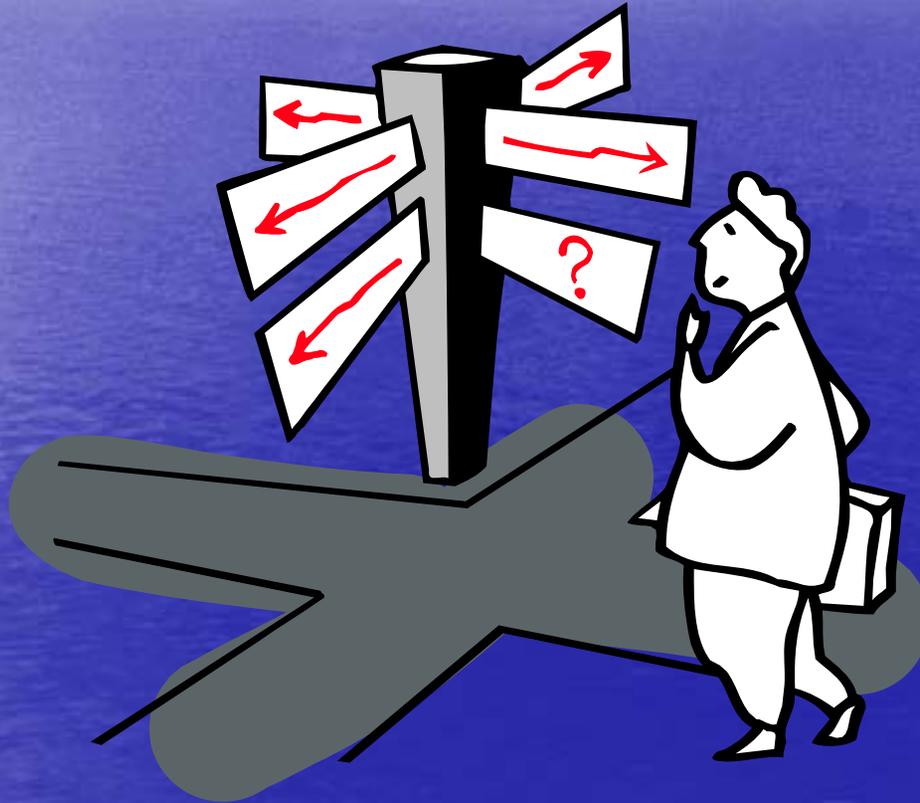
Guidelines

- Hydropower Licensing and Endangered Species
- Development of Historic Properties Management Plans
- Guidance for Shoreline Management Planning
- Preparing Environmental Documents

<http://www.ferc.gov/industries/hydropower/gen-info/guidelines.asp>



Questions





The Integrated Licensing Process



Purpose of the ILP

- Provides, a predictable, efficient, and timely licensing process
- Continues to ensure appropriate resource protection





Underlying Principals of the ILP

- Early study plan development
- Better coordination with other stakeholder processes
- Established time frames





Key Elements of ILP

- Preliminary application document
- Process plan
- Early scoping and study plan (study criteria)
- Approved study plan and study plan dispute resolution
- Feedback loop on studies
- Preliminary licensing proposal



Pre-filing vs. Post-filing

Pre-filing:

- Consult with interested parties
- Conduct studies
- Prepare license application

Post-filing:

- FERC conducts environmental analysis
- Staff recommendation to Commission
- Commission decision on license



Integrated Licensing Process (ILP)

Pre-filing

NOI/PAD

Scoping/
Process
Plan

Study Plan
Dev.

Studies/
Application
Dev.

1 year

1-2 years

Post-filing

Application
filed

REA
Notice

EA/EIS

Order

1.5 years



PRE-FILING





PAD DEVELOPMENT



Casting a wide net



Initial Steps

Pre-filing



- Applicant identifies and contacts potential stakeholders
- Applicant gathers available information
- Applicant prepares and files Pre-Application Document (PAD) and Notice of Intent (NOI)



The Purpose of the PAD

- Brings together all existing, relevant, and reasonably available information
- Provides basis for identifying issues, data gaps, and study needs
- Forms the foundation of future documents
- Sets the schedule for the ILP





Contents of PAD

- Project description
- River basin description
- Description of the existing environment and resource impacts to the extent they are known
- List of issues and information or studies proposed to fill identified information gaps
- List of relevant comprehensive plans
- Process plan
- Summary of contacts



Process Plan - Goals

- Provides overall plan and schedule for licensing consistent with regulation time frames
- Helps stakeholders keep up with the process
- Integrates other stakeholder processes to the extent practicable
- Describes how information will be disseminated





SCOPING



Fishing for details; filling in
the gaps



Scoping

Pre-filing



- Commission staff prepares scoping document and conducts scoping meetings to identify issues of concern
- Applicant and other parties further define process plan and schedule
- Parties submit comments and study requests



STUDY PLAN DEVELOPMENT



Sorting thorough the details to develop studies
to address issues



Study Plan Development

Pre-filing



- Applicant prepares Proposed Study Plan
- Parties meet to discuss studies and resolve issues
- Applicant submits Revised Study Plan
- FERC staff issues Study Plan Determination



Study Plan Development Process

Study Requests



45 days

Proposed Study Plan



90 days

Study Plan Meetings



30 days

Revised Study Plan



30 days

OEP Director's Study Plan Determination



Why are the study criteria important?

- Increased understanding of stakeholder information needs
- More focused studies
- Better study plans and more efficient use of time





Study Request Criteria

- Describe goals and objectives of study proposal
- Explain relevant resource management goals
- Explain relevant public interest considerations
- Describe existing information and need for more info
- Explain nexus to project operations and effects and how study results would inform license requirements
- Describe methodology and how it's consistent with accepted practice
- Describe consideration of level of effort and cost of study and why alternative study is needed



Study Requests

Study Requests should:

- Address each criteria thoroughly
- Be as detailed as possible
- Clearly relate how the information to be gathered pertains directly to any mandatory conditioning authority under FPA section 4(e) or 18 or the Clean Water Act



Proposed Study Plan

- *Detailed* methodology and addresses study criteria
- Schedule
- Progress reports/study reports
- Rationale for not adopting a requested study



Applicant's Study Plan Meetings: Study definition and issue resolution

Informal resolution of study issues:

- Seek clarity of study goals, objectives, and methods
- Understand the criteria and explore issues and proposed studies with criteria in mind
- Plan for multiple meetings





Revised Study Plan

- Same components as proposed study plan
- Reflects efforts to resolve disagreements
- *More detailed* methodology
- Address all comments and requests



Study Plan Determination

- OEP Director approves revised study plan, with any modifications
- Determinations based on the record





Formal Study Dispute Resolution

- Mandatory conditioning agency may dispute the OEP Director's determination for studies directly relating to the exercise of their conditioning authorities
 - A three-member panel of technical experts independently reviews the record to determine whether study criteria are met and makes a recommendation based on its findings
- ▶ OEP Director considers the panel findings and makes decision with respect to study criteria and any applicable law or FERC policy



Conduct Studies & Develop Application



Conduct Studies and Prepare Application

Pre-filing

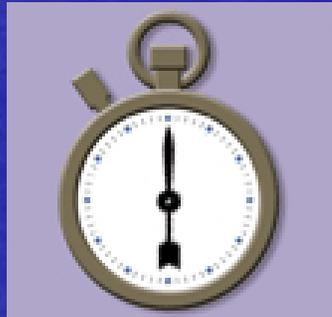


- Applicant conducts studies
- Applicant files study reports and parties review studies each year
- Applicant prepares Preliminary Licensing Proposal or Draft License Application



Review of 1st Years Studies

- Initial Study Report (within 1 year)
 - Overall progress
 - Explanation of any variances
 - Proposed modifications or new studies





Review of 1st Year's Studies

- Applicant holds meeting
- Applicant prepares meeting summary and proposes modifications
- Participants file disagreements and proposals for modifications or new studies
- Commission amends study plan as appropriate



Modification of Approved Studies

- Show good cause
- Document study was not conducted according to approved study plan
- Document anomalous environmental conditions





New Study Requests Must:

- Show material change in law or regulations
- Show why goals and objectives could not be met with approved methodology
- Explain why study was not requested earlier
- Show significant changes to proposal or available information
- Show new study satisfies study criteria



New Study Requests Threshold

New Study Requests Threshold for new studies increases each year:

- Good cause (1st year)
- Extraordinary circumstances (2nd and subsequent years)



Review of 2nd Year's Studies

- Updated study report (within 2 years)
 - Same process as for initial study report





Preliminary Licensing Proposal

- Preliminary Licensing Proposal Contents
 - Describes existing and proposed facilities, operation, and environmental measures
 - Includes draft environmental analysis
- Draft license application optional
- Draft BA, EFH Assessment, and Historic Properties Management Plan
- Comments on proposal due within 90 days



License Application

- No later than 2 years before expiration date





Suggestions for Study Implementation and PLP

- Provide sufficient info on studies in progress and initial study reports
- Discuss changes to study plans with stakeholders
- Focus study report meeting on studies rather than PM&Es
- Study report timing is flexible
- Weigh pros and cons of PLP versus draft license application

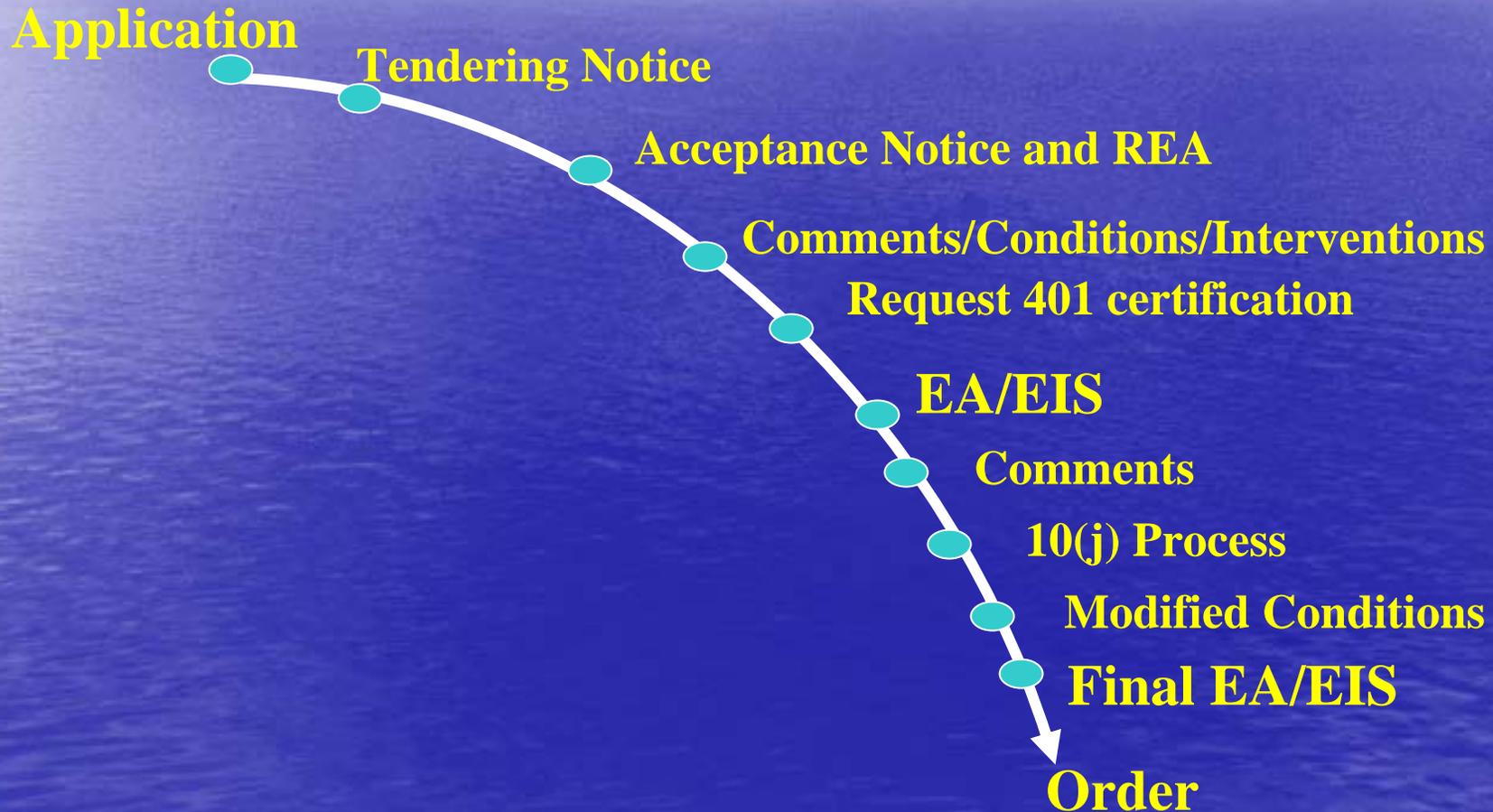


POST-FILING





Post-Filing Activities





File Application

- Applicant files application
- FERC issues tendering notice
- FERC Staff reviews application

Postfiling



1.5 years



Application Review

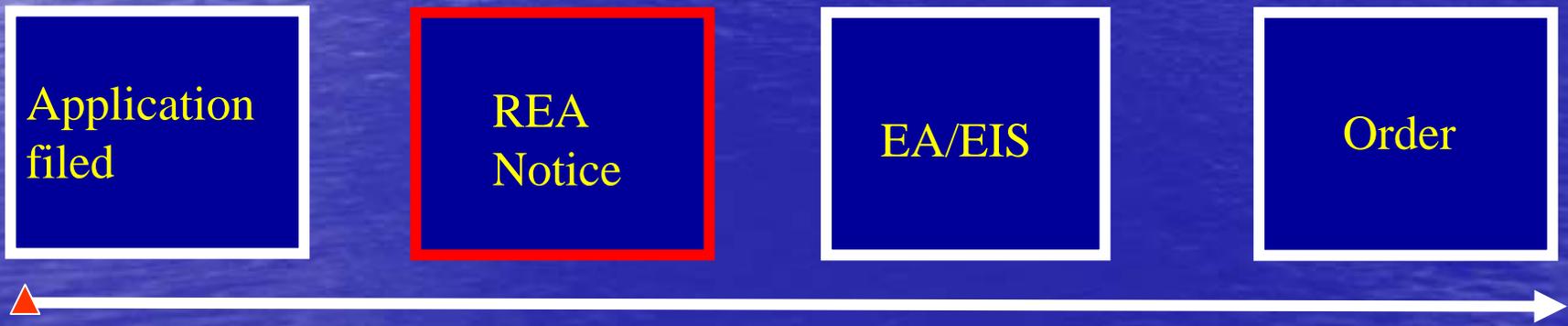
- Deficiency review
- Need for additional information



Ready for Environmental Analysis (REA)

- FERC staff solicits interventions, comments, recommendations, and conditions
- Agencies file recommendations and conditions
 - Some are mandatory

Postfiling



1.5 years



Environmental Document

- Staff prepares analysis
 - Draft Environmental Assessment (EA)
 - Non-draft EA
 - Draft Environmental Impact Statement (EIS)
- Staff makes licensing recommendation

Postfiling



1.5 years



Environmental Document

(continued)

- Comments on draft/non-draft environmental document (30-60 day comment period)
- Modified terms and conditions
- Final EA/EIS



Licensing Decision

- Most decisions are delegated to the Office Director
- Commission makes decisions on contested cases

Postfiling



1.5 years



License Order

- Document compliance with applicable requirements
- Include license articles
- Approve/modify resource plans





Rehearing

- Must be party to proceeding (intervenor)
- Must include statement of issues
- 30-day filing deadline



Appeals

- Circuit Court of Appeals
- Must be party to proceeding (intervenor)





ILP Guidance Document

"Ideas for Implementing and Participating in the Integrated Licensing Process"

<http://www.ferc.gov/industries/hydropower/gen-info/licensing/ilp/eff-eva/ideas.pdf>





ILP Guidance Document

"Understanding Study Criteria"

<http://www.ferc.gov/industries/hydropower/gen-info/licensing/ilp/eff-eva/study-criteria.pdf>





More Information

- Regulations (section 5)
 - http://www.access.gpo.gov/nara/cfr/waisidx_07/18cfr5_07.html
- Flow Chart
 - <http://www.ferc.gov/industries/hydropower/gen-info/licensing/ilp/flowchart.pdf>



TOLEDO BEND PROJECT ILP



P-2305



Schedule

- NOI/PAD mid-September 2008
- Scoping/site visit December 2008
- Application due September 2011
- License expiration September 2013



Toledo Bend Team

- Alan Mitchnick—coordination, terrestrial
- Jim Fargo—engineering
- Ken Hogan—aquatic
- Carolyn Templeton—recreation, land use, cultural
- Attorney



Office of Energy Projects
Division of Hydropower Licensing
Hydro West Branch 2

Alan D. Mitchnick

Senior Technical Expert

Certified Wildlife Biologist

Federal Energy Regulatory Commission

888 First Street, N.E. (PJ-14.4)

Washington, D.C. 20426

Office: (202) 502-6074

FAX: (202) 219-0205

alan.mitchnick@ferc.gov



Questions

