INTEGRATED LICENSING PROCESS EFFECTIVENESS EVALUATION FEEDBACK 2010

SUMMARY OF COMMENTS PROVIDED DURING PARTICIPANT INTERVIEWS, MULTI-SECTOR TELECONFERENCES, AND REGIONAL OUTREACH MEETINGS

MARCH 2011

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Introduction

When the Federal Energy Regulatory Commission (the FERC or Commission) adopted the integrated licensing process (ILP) on July 23, 2003, it committed to studying the effectiveness of the process in achieving reductions in processing time and cost. The purpose of this effort was to solicit ideas, tools, and techniques that were being implemented (or could be implemented) to achieve the goals of the ILP within the framework of the existing regulations. In conjunction with that effort, the Commission engaged federal and state agencies, Indian tribes, licensees, non-governmental organizations (NGOs), and members of the public involved in the first seven relicensing cases ("pioneer projects")[1] using the ILP in probing interviews, by-sector teleconferences, regional workshops, and a technical conference during the spring and early summer of 2005. Because these discussions were limited to ILP steps leading up to the study plan determination, the study was repeated in 2010, but considered all phases of the ILP.

The following chapters summarize the information gathered in the 2010 interview, by-sector teleconferences, and regional workshops. Transcripts of the November 3, 2010, Technical Conference, can be found on the Commission web page at (www.ferc.gov) or on eLibrary under Docket AD10-7-000.

[1] These seven projects are referred to as the pioneer projects because they opted to use the ILP during the transition period before it became the default licensing process.

Chapter 1: Stakeholder Interviews

Overview

This chapter summarizes the individual interviews conducted in May, June and July of 2010. The objectives of the interviews were to gather initial feedback on the process, identify areas for improved effectiveness, and inform stakeholders of upcoming regional workshops and conferences. The interview findings would also be used to design the three ILP Effectiveness By-Sector Teleconferences, four FERC ILP Effectiveness Regional Workshops and the FERC Multi-Stakeholder ILP Effectiveness Technical Conference.

A total of 95 phone interviews were conducted across all sectors (13 FERC staff, 17 applicants, 38 agencies/tribes and 27 non-government organization (NGOs) representatives) from a cross-section of 30 ILP projects. Interview comments were documented and compiled into a summary of findings. The information collected was not for attribution.

Participants were from the following FERC ILP Projects were interviewed:

- 2237 Morgan Falls
- 7528 Canaan
- 2301 Mystic Lake
- 2210 Smith Mountain
- 803 DeSabla-Centerville
- 2244 Packwood Lake
- 400 Ames
- 12589 Tacoma
- 13 Green Island
- 739 Claytor
- 2106 McCloud-Pit
- 2144 Boundary
- 2157 Jackson
- 2594 Lake Creek
- 2985 Willow Mill
- 12555 Mahoning Creek
- 2558 Otter Creek
- 2615 Brassua
- 2149 Wells
- 2179 Merced River
- 2355 Muddy Run
- 12607 Massena Grasse
- 2305 Toledo Bend
- 12829 Free Flow Power
- 12861 Free Flow Power
- 12921 Free Flow Power
- 12930 Free Flow Power
- 12938 Free Flow Power

- 12915 Free Flow Power
- 12912 Free Flow Power

Some of the key findings included:

General/Across all sectors

- The ILP is a fast moving process that requires a significant amount of collaboration and work up front.
- Setting expectations and clearly communicating deadlines created a better understanding for stakeholders involved.
- An active Commission staff/project manager helped encourage collaboration, helped clarify study criteria, and allowed all participants to better focus on the process.
- Detailed explanations in FERC's study determinations would provide more insight on why study requests were not accepted.
- There is a need for stronger coordination between FERC, the applicant and stakeholders to enable additional clarity on the post-filing process.
- Consider whether the ILP works well for original licenses, which have different needs than relicensing projects.

Sector-specific findings included:

Applicants

- The ILP promotes early stakeholder discussion and involvement.
- Many relicense applicants preferred the ILP because the license is issued closer to the expiration date. However, some indicated that is not always the case. Some experienced delays to due to 401 water quality certification, Endangered Species Act (ESA) consultation, and sometimes section 4(e) and Coastal Zone Management coordination issues.
- The FERC liaison to the tribes was very helpful.
- Applicants should have a strong internal technical team which engages with agencies and other stakeholders well.
- The ILP timeframes can be challenging for agencies and others who do not have the resources for such an intense effort.
- Time constraints lead to some stakeholders seeing study reports and other information for the first time when the initial and updated study reports are filed with FERC, which impacts both the time available for, and the interest in, collaboration. Some stakeholders feel they can't keep up with the information and therefore feel left out of the process.
- Because there are several comment periods, agencies were not always clear on when to file comments.
- It was important for investor-owned utilities to recognize and inform their management that the ILP requires more money up front than the other processes, which means there is a longer time before the costs can be put in the rate base.
- The ILP timing may be shorter, but it can be just as costly as other processes because it can require significant support from consultants due to the magnitude of effort over a short period of time.

Agencies and Tribes

- The ILP offered interested participants the opportunity to work collaboratively to try to identify and satisfy stakeholders and the applicant. The TLP doesn't seem to be as collaborative. The ILP is more collaborative and time efficient than other licensing processes.
- An independent facilitator was helpful in keeping the process moving, and tracking action items and issues. Agencies, tribes and NGOs preferred having a neutral facilitator throughout the process, not just for developing PM&E measures.
- ILP deadlines gave little time to do the necessary work for pre-filing; one idea that was put forth for consideration was looking at reducing the NEPA process time post-filing to gain time pre-filing.
- All interested participants must be involved in the beginning and throughout the process.
- Participants would prefer to get information ahead of meetings to help prepare notes and questions.
- Areas of the ILP that were not clear and need further explanation include where are the cultural, historical, and public safety topics addressed in the process?
- Changes in leadership in FERC and other agencies may change the level of involvement and the way decisions are made.
- Inexperience of the stakeholders, agencies, and tribes involved prolonged the process, making it much more difficult to reach agreement.

NGOs

- Frontloading the process leads to a tremendously positive outcome.
- Where applicants maintained up-to-date distribution lists, NGOs benefited from timely distribution of materials.
- The ILP gave more access earlier from the NGOs perspective which is helpful.
- Facilitators and/or mediators should be hired from the beginning of the process and would be seen as more credible if the stakeholder group had input on the selection process.
- When there are multiple licensings on the same river, it would help to have coordinated timelines. The strict adherence to regulatory timelines wasn't helpful.
- Getting reports only a few days before meetings made it hard to come prepared for discussions.
- Sometimes the mandatory conditioning agencies trumped the local situation.
- Areas to consider addressing and clarifying:
    - Document control can be difficult for NGOs because there are many different versions of different documents and it is difficult to keep track of which is the most recent version.
    - It is unclear when to file interventions.
    - Applicants may end up with the processes (FERC, 401 and Biological Opinions) in a series rather than in parallel.

FERC

- Comprehensive settlement agreements were viewed as a success.
- Having an active group of stakeholders and agencies, and an applicant with a lot of experience with hydropower was helpful.

- Early tribal consultation by FERC was good because it allowed tribes to be involved and informed in the way they expect – directly from the FERC.
- Being involved up front really helped because FERC can identify/get what is needed for the Environmental Assessment or Environmental Impact Statement (EIS).
- An applicant's transparency on project operations along with demonstrating flexibility and a willingness to meet interests, and sharing constraints led to the group's willingness to find solutions with minimal effect on the applicant.
- If the appropriate Fish and Wildlife Service and Nation Marine Fisheries Service representatives were not at the table, timely ESA consultation was difficult to achieve.
- Stakeholders could not fully engage when the applicant followed "the book" and did not host additional meetings.
- When the applicant overlooked stakeholders it was not good; often they overlooked landowners.
- Sometimes tribes were not responsive to FERC's attempts to engage and this was challenging.
- State agencies having their own state-Environmental Impact Assessment (EIA) document, rather than using FERC's NEPA document adds complexity.
- It's more resource-intensive than the TLP. It is important to be on top of things.

Stakeholders Interview Summary

The following sections, organized by phase of the ILP, summarize the main themes and comments on effective methods and experiences identified in the interviews.

Pre-PAD / NOI

Early Involvement is Critical: Recognizing that the ILP is a front-loaded process, participants prefer to become engaged as early as possible. All stakeholders find this early effort is quite helpful. Preparing for the Pre-Application Document (PAD) and the Notice of Intent (NOI) sets the tone for the project. Most participants believed that this phase should be used to identify the issues, discuss them, and lay out a plan on how to address the issues. Stakeholders find FERC's active role helps everyone understand the ILP, encourages identification of all stakeholders, encourages collaboration, and clarifies stakeholders' roles and responsibilities.

Proactive Applicant Leads to Collaboration: Feedback showed that initiating the Pre-PAD/NOI phase well in advance of filing the PAD with FERC allows for more collaboration to take place. The applicants who took a proactive approach of meeting face-to-face with stakeholders, collecting baseline information, explaining the process and sharing information established credibility with the participants in the process and created a strong base of information for the licensing process. In some cases starting early allowed licensees to complete a season of studies prior to submitting the PAD, which was helpful in streamlining the entire process. Most participants prefer face-to-face meetings when discussing project specifics and scientific data. In-person meetings allow stakeholders to build relationships. Most of the respondents rely on e-mail to receive updates, meeting invitations and communicate with others involved. Project websites dedicated to uploading and downloading documents are useful.

Stakeholders New to ILP Could Use Training; More Would Help: Respondents who had not been involved in ILP projects in the past relied on online materials and colleagues to better understand the process. The hydroelectric handbooks (http://ferc.gov/industries/hydropower/gen-info/handbooks.asp), the ILP Flow Chart, and the eLibrary are viewed as valuable resources. Some participants suggested that additional training opportunities, such as FERC-hosted workshops and monthly educational webinars, would be beneficial to those who are new to the process.

Additional Feedback on ILP Pre-PAD/NOI

Applicants

- Beginning studies two or three years in advance allowed applicants to accelerate the study phase and, in some cases, eliminated the need for the second year of studies; this provided additional time for PM&E development.
- Consider researching additional sources, including universities, counties, museums, and historical societies to find information.
- Holding stakeholder meetings prior to the PAD/NOI allowed applicants to collect baseline information and pare down initially requested studies using the study criteria.
- A website or file sharing site was used to publish documents allowing the applicant to save money and paper. Some applicants also sent CDs if the documents or maps were too large.
- Applicants should be prepared to address issues and know the answers. Explaining how the issues relate to the project is important.
- It can take a lot of work to gather information from the agencies and may require follow up conversations.

Agencies & Tribes

- It was helpful when applicants were engaged up front, communicated to agencies and started developing information prior to the PAD/NOI.
- Tribes should have the ability to consult and meet directly with FERC and the applicant to share information and requests in the beginning. Archaeological concerns need to be discussed. When this happens, the process runs more smoothly.

NGOs

- Although the timelines can be oppressive, they helped move the process along.
- If the applicant included the complete study plans in the PAD then there is more time to collaborate.
- Putting information out early is great and advance work on the PAD is helpful.

FERC

- When applicants were proactive and, in some cases, completed a season of studies working with stakeholders prior to the NOI/PAD, it allowed for earlier more fruitful conversations based on some data.

- Staff spending a lot of time clarifying the definition of project nexus and helping determine baseline allowed for all stakeholders to better understand these issues in future discussions.
- Applicants should be clear if they want a settlement agreement up front so everyone at the table knows.

PAD, Scoping and Study Plan Development, including Formal Study Dispute Resolution

Communication and Collaboration are Key: The PAD provided good information up front and people were much better informed. Agencies, tribes and NGOs prefer to be consulted as early as possible and often throughout the process. Licensees communicated and collaborated with stakeholders to gather information through project websites and distributing forms. One-on-one private meetings are seen as an effective way to build relationships between stakeholders and applicants. Applicants appreciated having the scoping meetings up front in the process to help set expectations for those new to the process. Having NEPA as a part of the study development phase was positive. Site tours offer stakeholders a better understanding of the project and specific resource issues involved in the licensing process. It is important to have FERC project coordinators who understand their role as impartial representatives, who are fair in the way questions are asked and information is presented, and in the way scoping meetings are run.

Differing Interpretations/Value of Study Criteria: There are varying opinions on whether additional guidance for the seven criteria is necessary. All participants agreed that the criteria are helpful in focusing the study plan process. Many agencies, tribes and NGOs had differing interpretations of the project nexus between project operations and effects, and therefore were dissatisfied when study requests were rejected by the FERC. Some are concerned that the study request process is too laborious and requires expertise in being able to estimate costs and determine methodologies.

Timeline Management and Understanding is Crucial: The ILP is a deadline-driven process and may be affected by unpredictable factors. Respondents concurred that the timeframes are very tight and may be missed if not managed closely. All suggest a careful review of the schedule and seasons for studies up front; also, a careful review of the study results and developing PM&E measures timeframe needs to be considered. Forming working groups is an effective method to review study plans in a collaborative environment.

Study Plan Process Provides Focus; Nexus a Significant Issue: The study plan process provides clear focus and enables stronger negotiations encouraging stakeholders to work informally through collaboration. Also, participants preferred to resolve differences informally whenever possible, because the time and resources required for formal study dispute resolution was considerable. If FERC rejects a study request, most stakeholders would prefer a more detailed explanation of why it has been rejected and another opportunity to submit revised study requests. Sometimes applicants did not make it clear how their revised study plans addressed

stakeholders' comments, or not, and if not, why. A more transparent documentation process is helpful.

Additional Feedback on PAD, Scoping and Study Plan Development

Applicants

- Providing site tours as part of scoping and sharing information gave agencies an opportunity to see more of the project early on, which helped formulate data gaps.
- The study Determination process and criteria, particularly nexus to the project, enabled the FERC to reject studies that were not appropriately related to the project.
    - One applicant provided reference cards with the criteria to help all understand and use them.
- The study plan and dispute resolution processes added rigor to the licensing process, in that it:
    - provided opportunities for review, comment and negotiation;
    - forced participants into negotiations and agreements because they would prefer to make the decision rather than letting the FERC decide; and,
    - combined with the EPAct Alternatives process, made participants more responsible and disciplined.
- Coastal Zone Management Act issues were not coordinated with the ILP and this caused delays that could have been avoided.
- Some federal agencies were very far from the project, which made it hard for them to participate fully and completely understand stakeholder interests and project operations.

Agencies & Tribes

- The timeframe within which initial studies must be conducted to find effects is tight. Having applicants gather information in advance helps.
- Determining the project boundary and where it ends was a grey area.
- Nexus to the project was subjective and can be interpreted in many different ways.
- Creating comment letters was time-consuming and resource intensive.
- It was important to understand how study results would be used from the beginning of the study development process.
- In some cases, tribal representatives said they anticipated more outreach and would have appreciated more consultation with the FERC and the applicant.
- Some of the participants were not clear whether it was appropriate to contact the FERC directly with questions or if the process prohibited this.

NGOs

- The PAD was a great improvement over the initial consultation document from the other processes.
    - The development of the PAD helped to define the universe of information.
    - The more the applicant invested in the PAD development, the better the process.
- FERC's Role
    - The FERC helped the group focus on collaboration and ensure that the study plans were collaboratively developed.
    - Public scoping by the FERC and the site tour were key.

- Agencies and NGOs worked very collaboratively on study plans, which was helpful.
- The project nexus definition was considered "cloudy" and inconsistently defined across ILP projects. It would be helpful if FERC explained how it has been handled in other projects.
- There needs to be clarification and better guidance on the criteria, particularly the project nexus criteria, so that FERC reviews comprehensively between and among projects.
- The ILP seemed to force participants into adversarial positions early on due to the study determination process. Participants see the study plan determination process as a proxy for the whole license, making it more difficult to collaboratively develop PM&E measures later in the process.

FERC

- It is important to recognize that sometimes resource agencies were more comfortable engaging in one-on-one conversations to discuss their specific resource concerns, rather than in broader scoping sessions. Designing ways to accommodate different discussions is helpful.
- The FERC coordinators found the study criteria to be very helpful.
- Applicants should make it clear that comments on study plans should be made using the study criteria.
- Some suggested that after the formal dispute resolution panels have met it might be helpful to add an additional informal exchange among the concerned participants to see if resolution can be found. The dispute resolution process helps illustrate the real issues, and sometimes there are clarifications where agreement might be found, or additional negotiations might be successful. Taking this extra time might be helpful prior to the final determination.
- Having only 15 days to comment on the revised study plan was very tight. It is important that the applicant send the information out on the first day of the process.
- It would be helpful to have more time in the informal dispute resolution process for the Office Director to develop a more thorough determination
- In some cases when the applicant changed its perspective on the need for a study or the study plan approach, it created a moving target for the participants.

Study Implementation, Reporting, PM&E Development and Management Plans

Timeframes are Challenging: In general, participants from all of the sectors found that the timeframes were very challenging and required planning up front. Analyzing the timing of studies, anticipated study results, and time to develop PM&E measures from the beginning helped all participants. Collaborative groups worked together to overcome the timing issues. All support establishing resource work groups where study results can be reviewed and PM&E measures developed.

Collaboration Strengthens Relationships: Collaborative efforts helped both for working on studies and PM&E measures. Participants appreciated when an applicant did a good job of presenting study results linked to study objectives, staying on task, and showing how the information gathered addressed identified issues. Stakeholders are more reliant on adaptive management since study results are not conclusive. Applicants understood that it was critical to pay attention to details, be responsive, and execute commitments to strengthen relationships with stakeholders.

Study Information Difficult to Capture: Most found it very difficult to collect the study information needed in the two-year period and have adequate time to develop PM&E measures. Unpredictable weather conditions and other factors have interfered with the study seasons. In some cases, preliminary study reports were submitted to the FERC after the license proposal. Most still supported the ILP process, but suggested that it takes extra effort to sustain a collaborative process to develop PM&E measures while the formal filings are happening in overlapping timeframes.

Additional Feedback on Study Implementation, Reporting, PM&E Development and Management Plans

Applicants

- Consider holding meetings before finalizing study reports to help demonstrate transparency and build the spirit of collaboration.
- Depending on the season and/or timing of the license, it can be very difficult to collect the information, interpret study results, and formulate PM&E measures.
- State and federal resource agencies that did not participate up-front or made late study requests had difficulty getting up to speed and understanding the project.
- Sometimes there are different expectations by different agencies on how complete the resource management plans need to be in the final license application.

Agencies and Tribes

- It appeared as if the FERC was representing the applicant rather than the entire group of stakeholders. It feels as though the burden of proof is on agencies, tribes and NGOs.
- The applicant did not feel obligated to conduct studies or provide information unless FERC requires them.
- Geographic scope and defining project boundaries was a sticking point in many ILPs.

NGOs

- In general, the process goes well when the applicant takes a positive tone and approach.
- It was beneficial when the FERC is clear about what studies met the seven criteria.
- The applicant can create a collaborative atmosphere when the process is science-driven; this may lead to a greater likelihood of collaboration on PM&E measures rather than litigation.

- Having a collaborative attitude and tone, being transparent with edits to documents, and developing a single document used by all stakeholders showing how comments were addressed was very helpful.
- Agencies could be more conservative in their PM&E measures.
- When the applicant actively demonstrated they are trying to address others' needs it helps the entire group understand each other.

FERC

- It was helpful when the applicant prepared technical memos on studies and sent an email to prompt people that it was posted. Stakeholders could see the results up front and did not have to wait for the filing.
- When applicants shared existing information and demonstrated its relevance to the proceeding it cut down the need for additional studies.
- It is a mismatch to have the study report due after the license application was filed.
- The FERC could have a draft agreement as a strawman that can be adopted for each project to use as a starting point.
- Applicants should include draft resource management plans in the preliminary licensing proposal (PLP) or draft license application (DLA). This would permit stakeholders to provide more constructive input on the plans and better enable the applicant to file final management plans with the final license application (FLA).
- The timeframe creates a difficult catch 22 when developing PM&E measures. On the one hand, beginning this discussion early was recommended. On the other hand, FERC staff recognized that most stakeholders wanted the study results to develop PM&E measures most effectively. Sometimes, all the study results are not available to begin discussing PM&E measures in a timely manner.

Preliminary Licensing Proposal and Draft and Final License Applications

Opinions on the DLA and the FLA Varied: Timing was a major consideration for applicants. Some applicants preferred to move faster than the FERC timeline, whereas a few of the stakeholders wanted more time to review the documents to be able to provide additional edits. Not all participants understood the need for the draft license application and would prefer to eliminate this step in the process in order to focus resources on study reports and developing PM&E measures to be included in the final license application. Using the EPAct process for alternative conditions to modify PM&Es helped everyone stay focused. Without complete study reports, the proposed PM&Es were open-ended to allow for additional unknown variables; this created more risk for both the applicant and other stakeholders because the more specific PM&E measures were often determined after the license application was filed.

Additional Feedback on Draft and Final License Applications

Applicants

- The Draft License Application and the Final License Application filing timeframes did not provide sufficient time to develop proposed PM&E measures because the deadlines do not allow for in-depth discussion, trust building, and information collection.

Agencies and Tribes

- Additional guidance on what to expect throughout the process was needed for some tribes. Some tribal representatives were not clear on what the project needed until their involvement in the PLP and application filing.

NGOs

- There is a challenge of developing the draft license application before stakeholders have had enough time to review study results.
- Preparing the draft license application takes time away from meeting with stakeholders.
- Organizations would be more comfortable if the wording in the draft application does not convey that conditions are "set in stone." It would be better if it was not written as a final application would be, that makes it less "final" in the eyes of NGOs.
- The applicant submitted a draft application, and then people commented, and then the applicant developed the final application. NGOs spent a lot of time reviewing others' comments rather than talking to others.
- The stakeholder group should be able to check to see if progress is being made and determine whether it is worth waiting for the final license application, and skipping the draft.

FERC

- Requiring complete management plans in the license application was good; it takes educating the applicant on the merits, but once it was done they saw the value.
- There is a conundrum with the final study results and reports and the amount of time it takes to prepare the draft license application/preliminary license proposal.
- The applicant might consider asking for a waiver for filing the PLP or draft license application, with an agreement by agencies, stakeholders involved in order to collaboratively work on PM&E measures for inclusion in the final license application.

Post-Application Filing through License Issuance

Post-Application Schedule Not Clear: Additional information on post-application filing and clarification on the timing of the EA is needed. For example, NMFS could not plan its timing for the BiOp when the schedule for the EA was unclear, making it hard to assign resources in the appropriate timeframes. A targeted BA was more effective; a clear understanding what kind of information is needed between the FERC and NMFS/FWS would have been helpful. The structure of presenting this information in the EA would be valuable.

Timing for License Issuance Not Clear: It is not clear how long it will take to get the actual license order; stakeholders need more information on the steps involved to issue the order. After final license application filing, the steps were not always clear. The timing of ESA and 401

conditions, and 4(e) conditions were not well coordinated with the FERC and can hold up the license issuance timeframe significantly.

Additional Feedback on Post-Application Filing through License Issuance

Applicants

- National Marine Fisheries Service/Fish and Wildlife Service were not happy with the FERC developed EA to serve their Biological Opinion needs. Applicants were asked to do a BA to help agencies.

Agencies and Tribes

- Agencies would like to better understand whether completed studies are still relevant after the application is filed. How would the FERC consider this information if they application is already filed?

FERC

- The process went smoothly after the license application was filed.
- It seemed as if the license was issued faster, compared to the TLP or ALP.
- In certain cases, the settlement came after the draft application was filed due to time constraints.
- The water quality certificate can hold up the license and frustrate participants involved in the ILP.

The FERC's Role in the ILP

Active FERC Coordinators Encouraged Collaboration and Communications: Participants across all sectors agreed that FERC's participation in the ILP facilitated the process and encouraged collaboration, and that it was best when the FERC coordinators were active in stakeholder meetings. FERC's website and resources were helpful in bringing participants up to speed quickly. Most participants relied on FERC representatives to keep stakeholders engaged and focused on the ILP by attending public meetings, providing guidance on the process, listening to the issues, and motivating everyone to work together. A majority of the respondents requested more involvement from FERC. Stakeholders attributed FERC's presence to better collaboration and communication in the process.

Some Perceive the FERC as Biased: Some shared concerns that the FERC was perceived to be biased towards the applicants because the study resolution process, particularly using the project nexus criteria, tended to align the FERC determinations closer with the applicants' perspective/interests.

More Needed in the FERC NEPA Document for Some Agencies: Some of the participants raised concerns that the FERC NEPA document did not address state and federal regulatory agency (i.e., 401 agencies, 4(e) conditioning agencies, the ESA agencies, and where relevant, the Coastal Zone Management Agencies) analysis and coordination needs. Better coordination between the federal and state agencies on information and analysis, and coordination of all the processes could improve the post-filing process. Some shared concerns that when the FERC provides guidance on FERC policy regarding certain PM&E measures it is not necessarily always consistent because the FERC has made different decisions in different proceedings.

Additional Feedback on the FERC's Role in the ILP

Applicants

- The ILP transition from ALP and TLP was managed well by the FERC coordinator. Moving from something highly collaborative to a more structured schedule was challenging and handled well.
- The ILP regulations were well-defined on what is needed and when it is needed.
- The FERC staff was always available and involved when needed. Staff built trust and good communications by remaining neutral.
- Deadlines, schedules, and expectations were communicated from the beginning of the process.
- Licensees appreciated the FERC's flexibility in accommodating waivers.
- Having FERC look at the project and complexity to adjust the NEPA timelines was beneficial.
- Applicants used the FERC website to post study data, plans, and reports; stakeholders had a wealth of information.
- Licensees agreed that FERC's effort to conduct the ILP effectiveness evaluation was valuable. Applicants used the best practices guide from 2005.

Agencies and Tribes

- FERC's being involved in the beginning set a positive tone.
- Agencies believed that it was important for the FERC staff to come see the project and to meet the other people involved. This led to better collaboration and understanding.
- The FERC oversight and deadlines helped move the relicensing process forward; sharing what FERC has done in the past and other experiences helped agencies and tribes learn about the process.
- FERC has the best website in the government. Their notification process was ideal.
- Some believe that the FERC could play a stronger role in encouraging collaboration. Staff could help the participants be more creative in thinking how to reach the best licensing terms and PM&E measures.
- The FERC should be at the table to answer questions about authority, responsibility and other questions.
- It is important to have the FERC staff trained on the ILP before getting them involved. Some project coordinators had more understanding than others.
- FERC's NEPA process is limited and narrow. It did not provide enough information for the state-EPA process, and the information was not provided in a way that is suitable for Biological Opinions. The FERC also does not consider cumulative effects as broadly as it should.
- In some cases, the FERC mediated and worked with stakeholders to solve their issues related to 10(j).

NGOs

- FERC's presence helped remind the applicant to be collaborative and consistent.
- More engagement from FERC tended to occur in the ILP, so this is a big improvement over other licensing processes.

- It was better when FERC was able to directly speak for FERC, rather than the applicant representing/filtering what the FERC would say.

FERC

- Commission staff involvement seemed to be positive. Although staff may be invited to every meeting, representatives were most valuable when they were involved in discussions related to highly contentious issues; they should plan to attend those meetings where tough issues are being discussed.
- FERC should do more to make sure everyone stays in the process and on schedule, particularly in the absence of a third party facilitator.

Chapter 2: By-Sector Teleconferences

This chapter summarizes the three by-sector teleconferences conducted in July 2010. The objectives of these teleconferences were to build on the feedback and areas for improved effectiveness, to allow stakeholders of similar sectors to converse and suggest improvements from similar experiences, and to inform them of the future regional workshops and multi-sector technical conference. The findings will also be used to further inform the development of the four FERC ILP Effectiveness Regional Workshops and the FERC Multi-Stakeholder ILP Effectiveness Technical Conference.

Applicant Teleconference: Tuesday, July 27, 2010

Pre-PAD/NOI and the PAD

- Beginning as early as possible is helpful in preparing for the ILP. Applicants began working with their consultants at least a year or a year and a half in advance of the ILP officially beginning.
- There were varying levels of experience using a facilitator. Some participants did not use a facilitator. Others who did found facilitation useful in managing meetings, engaging stakeholders in the process and schedule, and negotiating PM&E measures.
- One participant noted that facilitation is effective in projects with potential disagreement. The need for facilitation depends on a particular project, its stakeholders, and the issues.
- Facilitation was valued particularly during negotiations, rather than throughout the process.
- FERC's role as a facilitator was useful in discussing and resolving disagreements.
- The environmental consultant was an important, independent resource in this phase. Applicants relied on their guidance, particularly those new to the relicensing process.

Study Requests

- Being available and open to discussing the study requests made it easier to resolve most conflicts early on.
- The study criteria made it easier for the applicant and stakeholders to focus on the most important studies. This is critical because there will always be disagreements on which studies should be completed.
- Applicants felt the study criteria were clear and understandable. In particular, the nexus study criteria made it clear how study requests would be accepted or rejected.
- FERC's process for accepting study requests sometimes conflicted with studies other agencies require for their processes (see Dispute Resolution).
- FERC views its responsibility and reach of the project differently than other agencies, and this influences the studies that are done.

Dispute Resolution

- Some applicants avoided dispute resolution by completing studies they deemed unnecessary. In at least one case, the results supported applicants' original stance.
- Disputes could be avoided when agencies had a clear point of view on issues. One difficulty that leads to dispute is unclear and disparate opinions within an organization.

- The ILP's study plan does not always satisfy the study needs of other mandatory conditioning agencies. In these instances, the applicant either completed the agency's requested study, in order to avoid a delay of the ILP later on, or worked with them outside the ILP to resolve the disagreement.
- Dispute resolution can serve a mediation role to facilitate agreement on study requests.
- Some applicants were able to avoid formal dispute resolution by collaborating with stakeholders to mutually develop study requests.
- When stakeholders agree to a study methodology it is easier to accept the study results.
- Participants noted that some disagreements are with individuals, and not with the process or study plan.

Study Results Review/Preliminary License Proposal

- Some projects experienced new agencies joining the process at this phase, disagreeing with the study plan, and wanting to reinvent the studies. This hampered participants' ability to review the study results. Applicants with a facilitator, who could explain the process and how issues had already been addressed, were able to largely avoid these process delays.
- Sharing technical memos throughout the process was appreciated by stakeholders.
- Meeting often and regularly with stakeholders to discuss the study results helped manage the amount of information.
- Applicants recommend focusing on completing and reviewing studies, rather than on the Preliminary License Proposal (PLP). Complete studies are needed to begin discussing PM&E measures.

Post-Filing Activities

- Coordinating licensing requirements with other agencies creates delays for many projects. In particular, the 401 certification causes delays because it is an entirely separate document from the ILP.
- Applicants can prepare for and avoid anticipated delays by planning early. This can include preparing a biological assessment or state environmental consultation.
- FERC's requirements are understood to be unique and not necessarily support other agencies' requirements; the participants did not offer a solution to this.

FERC's Role

- FERC involvement was appreciated, particularly in being able to offer guidance, explain the ILP process, and clarify the study criteria.
- FERC staff had a range of experience with hydro relicensing. In meetings, knowledgeable FERC representatives were invaluable to the discussion. However, those without a strong understanding of the ILP could disrupt the meeting with misinformation.
- Since FERC is unable to participate fully in the project's many discussions, applicants rely more on their own consultants to give direction on the ILP.

State and Federal Agency and Tribe Teleconference: Wednesday, July 28, 2010

Pre-PAD/NOI and the PAD

- All participants agreed that early collaboration is important. When an applicant tries to sit down and talk before filing the PAD, it indicates that they are serious.
- Identifying stakeholders and clearly explaining their role early on in the process is helpful. Participants would prefer more explanation about the role of each agency, who is responsible for the 401 certification, and to define the jurisdictions for the tribes.
- Applicants should share identified issues and an approach on how to study issues.
- There are many inexperienced people who do not have a clear understanding of the ILP. As a result of inexperienced stakeholders, a few of the respondents felt that the interests of the public are not represented as well as they should be.
- Although baseline studies were considered useful, one participant was concerned when licensees did not fully study the issues and did not do further studies to meet the agencies' request. It is better for the applicant to share the baseline results and try not to determine whether the studies answer the relevant questions.
- Agencies appreciated the applicant's willingness to consult with the agencies a few years ahead of time to discuss completing studies ahead of the timeline.
- It is critical for baseline studies to be conducted in a typical weather year or the studies will not be considered valid.
- Identifying the appropriate contacts within each agency is important.
- There is a need to motivate licensees to be more communicative and collaborative with agencies.
- Applicants that show stakeholders a product and are not willing to accept feedback do not demonstrate good communications or willingness to collaborate.
- FERC must clearly delineate its responsibility and understand other agencies' responsibilities.

Tribal Consultation

- FERC's outreach to some tribes was considered to be nonexistent for some projects.
- Tribes would appreciate per diem or mileage reimbursement, which would enable tribal representatives to be actively engaged.
- The tribal consultation is too close to the notification phase in the process. Notification should not be considered tribal consultation.
- Tribes may lose motivation to attend meetings if they are not being heard.
- FERC's presence in meetings may seem to represent the interest of the applicant if the tribes's viewpoints are not supported.

Study Requests

- Participants agreed that licensees could eliminate points of contention by accepting more study requests.
- Each agency has its own regulations/policies which require a certain level of specificity. If a study request is denied because it is considered outside the scope of the project,

agency biologists will not be able to obtain the specific data needed to verify project nexus.

- The bar for project nexus is set too high since it requires proving the impact in order to get the approval for the study to prove the impact. Agencies suggested that FERC do a better job identifying project nexus and the criteria to help agencies meet the criteria.
- An agency will not issue a 401 certification unless it receives an adequate level of data. All agreed that the 401 certification should be coordinated with the ILP.
- If an applicant changes the project scope (i.e., number of turbines) between the PAD and the license application, stakeholders must consider changing the study requests.
- The number of years to conduct studies is a shared concern among many stakeholders.

Study Plan Development

- Protection of cultural artifacts is an area of concern for tribes.
- The key for a successful ILP comes in developing study plans through a collaborative process where each participant can raise issues to frame and develop the study plans.
- Greater resource efficiencies might be attained if applicants and stakeholders find ways to better integrate studies.
- FERC could be a better leader and communicator by working with agencies to reduce duplicate studies.
- Citizen involvement has been minimal when advisory committees convene or meetings are held during the day.

Dispute Resolution

- It would be useful if FERC would recognize settlements reached by the participants on studies. It is frustrating for stakeholders to come to an agreement with the applicant and then have FERC determine that the applicant is not required to do a study. A settlement had been reached where the applicant agreed to do the study but due to the FERC's decision, the applicant doesn't do it. It appeared as if FERC gave no weight to the participants trying to work out their own solution.
- Some are concerned that FERC ignores the Dispute Resolution Panel's decisions.
- FERC could elicit interventions after the PAD so there is a defined service list for Dispute Resolution.

Final Thoughts on the ILP

- Participants appreciated the opportunity to provide feedback.
- It is critical for FERC to work with other agencies.
- Hydropower has many impacts on water and resources that agencies need to protect.

NGO Teleconference: Thursday, July 29, 2010

Pre-PAD/NOI and the PAD

- Outreach from FERC and the applicant during the beginning of this process was very helpful.

- In this phase, it is important to take a long-range view of the studies. The studies completed in this relicensing will become the baseline studies for the project's next relicensing process.
- In some cases, NGOs and other stakeholders were not present during this phase. NGOs could have been more valuable if included in this phase, rather than included later.
- FERC should make sure NGOs are contacted during this time.

Study Requests

- Some NGOs were unaware of the study criteria, but were still able to discuss and review study requests with the applicant.
- Study criteria were difficult for laypeople to understand. Without process support from NGOs or other professionals, many stakeholders would have been unable to participate.
- In general, the study criteria pertaining to nexus and level of cost were the most ill-defined and difficult to describe. The other study criteria were understandable.
- A project's boundary seemed to be interpreted differently depending on the applicant. A definition of boundary by FERC would be helpful.
- Some NGOs believe FERC has a narrow view of what it is responsible for, and, therefore, what studies should be required. Study requests are limited to hydro issues even when a project may have other purposes, such as water supply.
- The legal basis for study determinations should be stated. Overall, there is an absence of FERC counsel presence. This gives the appearance that decision makers are not consulting their legal team about what is jurisdictional, and thus making illegal decisions about study requests.
- Participants noted that a neutral, third party who could facilitate meetings and summarize the discussion would be useful. Those participants whose meetings were run by the applicant felt the conversation and meeting notes were reflective of the applicant's own interests rather than the larger discussion.

Study Plan

- Once the study plan has been submitted, follow up meetings to follow its progress would be appreciated. Some participants believe the current means of communication are insufficient for broad public involvement.
- Some participants noted that even with public meetings, sometimes local stakeholders do not attend. Participation is highly dependent on the individual project and its unique issues.
- There were different levels of collaboration depending on the applicant and its project consultant. In some cases, they were agreeable to studying a full array of project impacts whereas in others the opposite was true. Projects could benefit by having the consultant chosen by the project's stakeholders, as is done with California's 401 water quality certification.
- Greater emphasis on how information will be used is important and could be done better.
- This is a particularly difficult phase of the ILP both because of the amount of information involved and the discussions needed to decide on a study plan. However, once the need for a study is agreed upon, there is better collaboration in the development of how to collect data and report on it.

Dispute Resolution

- In one project, dispute resolution was avoided by the interjection and direction of other governing bodies.

- During dispute resolution, the active participation of FERC would take the emphasis off of the applicant and its interests.
- Those who participated in formal dispute resolution noted that conservation groups are only invited to participate if they are invited by the panel. NGOs felt they should be able to file a study dispute if their study is rejected by the FERC.
- When study requests are rejected, a thorough explanation of that decision would be useful. Stakeholders could then work on creating or adjusting their requests to be acceptable.
- Those who participated in informal dispute resolution felt their concerns were not addressed or preserved because the meetings were led by the applicant. The role of a neutral facilitator could have been useful here.

Study Plans Review/Preliminary License Proposal

- Participants noted that the timing of the PLP makes it difficult to develop. In some cases, studies were not complete and not included in the PLP. Thus, NGOs did not have complete information in time to develop their PM&E measures.
- The short timeframe to complete and review studies is difficult. In some cases, the applicant cooperated with stakeholders to conduct early studies and this helped manage the timeframe.

Post-Filing Activities

- FERC should work with other mandatory conditioning agencies to coordinate the necessary studies so they can do studies all at once rather than in a series. This would avoid conflicts later in the process, as well as conflicts associated with processes such as the 401 certification.
- NGOs added that while agencies were present during study plan development, there was different success in achieving their study needs through the ILP process.

FERC's Role

- FERC should participate in every meeting; otherwise, they will not be fully informed about the project by its stakeholders.
- The participants reiterated the importance of FERC cooperating with other agencies as well as requiring public meetings after the PLP is filed.
- Interpretation of the study requests by FERC seemed to be highly dependent on the individual FERC representative. FERC should establish a protocol for accepting or denying study requests.
- FERC receives the majority of project information from the applicant; this makes it difficult for some additional, pertinent information to be seen or addressed.
- When there are disagreements or discussions about study requests, it would be helpful for FERC to act as an arbitrator. Some participants added that in some cases, FERC's presence alone could have helped discussions.

Final Thought on the ILP

- Critical Energy Infrastructure Information (CEII) is considered an impediment to public participation and project knowledge.

Chapter 3: Regional Effectiveness Evaluation Workshops

This chapter summarizes the comments provided at each of the four regional workshops conducted in September 2010. The objectives of these workshops were to review feedback and areas for improved effectiveness from the interviews and by-sector teleconferences.

Albany, NY: September 21, 2010

Segment 1 – Communication and Managing Timelines

- Short time frames require careful, coordinated scheduling to include all stakeholders:
    - The ILP requires agencies to work in a very short timeframe, and there are time sensitive meetings that are based on the applicant's schedule. The schedule should be based on everyone's availability. Sometimes because of the workload, other stakeholders cannot attend. Applicants could conduct surveys of the dates that stakeholders are available. In some cases, there are some developers that will not query stakeholders and it hurts the process.
    - Consultants have used relicensing calendars to help schedule meetings. At the beginning of the process stakeholders are asked to start blocking out dates. Tools, similar to Doodle, collect dates that people are available. When the applicant or consultant needs to schedule a meeting they are able to look for the date that people have listed as free.
- More communication from FERC and the applicant would help agencies plan and engage appropriate representatives. For example, state agency did not receive the NOI and the applicant was not aware of the state's authority.
- The ILP projects need to be managed closely by FERC so that applicants follow through on agreements or study dispute resolution. In one case, the applicant and an agency agreed to take some studies off of the table for the first season, but they were then lost and there was no follow through. The studies did not get conducted in the second study season.
- Tracking action items and good meeting management practices are strongly recommended to obligate all participants to hold up their end of the agreement on the process.
- The group agreed that is important to have a game plan before the ILP begins. Understanding each other perspectives enhances the collaborative effort.
- Early discussions are valuable to state agencies that have limited resources and are expecting many more new project licenses to go through the ILP over the next 15 years. Agencies know the economics and the interests of relicensed projects from 30 years ago. Working with brand new developers that have no experience in licensing processes will be challenging.
- There is a delicate balance of interests when it comes to the initial discussion before the ILP begins. Applicants would rather not lead with their chin and agencies do not want to bias a process. This is not unique to the ILP, but it happens.
- Attendees discussed that front-loading the PAD has been helpful in some cases. A front-loaded PAD provides the agencies with more confidence that pre-PAD discussions held

with the applicant are included and will be addressed. Applicants believe that a front-loaded PAD builds trust and helps with the study seasonality issue.

Guidance from FERC

- Stakeholders expect FERC to provide more guidance to new applicants on what should be included in a PAD.
- Based on the group's experiences, there are some licensees that will reach out to stakeholders pre-PAD and there are others who do not collaborate with stakeholders prior to the filing of the PAD. Some applicants give the impression that if it is not stated in the regulations they do not have to reach out to stakeholders ahead of time.
- The group unanimously agreed that the initial letter that FERC sends to applicants should include more guidance on how to approach the ILP. The letter should be sent at least one year to 18 months before the NOI is filed. Suggestions included:
    - Links to pertinent FERC resources on the FERC website;
    - Explanation of what should be included in the NOI and PAD;
    - A brief explanation that the project will go through the ILP unless the applicant follows the steps to submit a request to go through another process;
    - Information for small hydro applicants about the Small Hydro Website; and,
    - Explanation that there may be other processes the applicant needs to follow in order to satisfy state agencies' and federal resource agencies' requirements.
- FERC could make follow up phone calls to the applicants in order to answer questions and establish a relationship between FERC and the applicant.
- One agency believed that their office could also send a letter, similar to the FERC letter, to the applicant to help make the process more efficient. Early outreach will help agencies look at the stakeholders' interests and develop internal staffing plans.
- Enhanced language in the regulations could encourage applicants to begin early and consult with stakeholders. Applicants tend to take FERC's guidance more seriously than consultant's recommendations.
- FERC explained that a staff person actually prepares the letter to the applicants, but that person may not be the same person who works on the project. However, that person is the point of contact and always available to answer questions.

Segment 2 – Understanding the Study Criteria

Study Criteria - Overall

- Understanding the study criteria has to do with communicating with stakeholders. It is helpful to bring the study criteria when meeting with key stakeholders and explaining what it means to them.
- Agencies felt that having to use the study criteria constrained their ability to fulfill their jurisdictional responsibilities. It is helpful to everyone to have everything, including agencies' responsibilities, explained up front.

Study Criteria - Project Nexus

- A few members of the group agreed that people generally understand that the study has to be connected to project nexus.
- There is confusion about FERC's approach to NEPA and the studies, compared to the state and federal agencies and their respective NEPA processes. The confusion stems from what has been done in the past and the baseline information. FERC will only require what is needed for the FERC, but other stakeholders also need information and the FERC does not take that into account. Participants recommended that all

stakeholders make their needs very clear early in the process so that decisions can meet all stakeholders' needs.

- The FERC staff should be available so that stakeholders can bring them in when needed at any time in the process. A pre-ILP meeting between FERC and stakeholders to explain the expectations and the process would be useful.
- Consistent direction from FERC and having written guidance is critical to allowing those involved to better understand project nexus. Some stakeholders who were involved in multiple projects said that FERC staff is not consistent in their decisions or approach.
- FERC staff should be involved at the onset of the ILP project to discuss issues, such as nexus or cost, and find a common understanding. An explanation about the dispute resolution, the alternatives and the process all the way through to submitting the Final License Application helps to set expectations.
- FERC did a great job explaining the study criteria and study determination process to the participants. Some agencies said they cannot issue certain certifications unless FERC becomes more flexible in working with other agencies. The study criteria could be further refined to include what other agencies might need, for example, for Section 106.

Study Criteria – Estimating Costs and Level of Effort

- State agencies find it challenging to understand how much a particular suite of studies would cost if they are not running the studies. Creating a good estimate requires a lot of work and experience. State agencies do not have the resources to develop an accurate estimate. In some cases, agencies have had to use, "low, medium or high costs" as an estimate.
- Guidance from FERC on how to create an estimate of costs and level of effort may be useful to helping those with less experience.
- An honest discussion about level of effort is needed among consultants, applicants and agencies. Stakeholders need to trust that consultants are presenting honest estimates.
- Clarification regarding how FERC weighs the information from the stakeholders was requested. FERC noted that the costs, along with other criteria, are not always addressed well by the study requestors. FERC looks at the cost estimates, analyzes whether the agency has provided information that the applicant did not have, and determines whether the study is needed for the agency and the Commission. FERC staff also considers whether the information gain justifies the additional cost. FERC may not need the full level of effort that the agency is asking for in order to meet the Commission's needs.
- FERC looks at what is needed on a project in order to determine whether a study will be accepted. The size of the project is considered when looking at study needs; the study plan package is generally proportional to the scope of the project.
- Agencies and NGOs agreed that the study plan determination should focus on the reason for the studies more than on the estimated costs or levels of effort. Attendees believed that there cannot be a standard procedure for each project, but some guidance on how to estimate level of effort and cost would be useful.
- Resource-based working groups help ensure that applicants are communicating with stakeholders and assessing study needs. The working group looks at what the applicant is going to study, determines how to study it, and discusses how the consultants might approach it.
- It is critical to have the NGOs and agencies trust the applicant's consultants.
- Agencies that have mandatory authority on 401 or Section 18 have to work with the applicant, and it can be complicated if FERC has said that particular studies are not

needed. Agencies have found it challenging to explain to applicants the need to conduct a study after FERC has rejected it for the ILP.

Segment 3 - Study Plan Process

- The ILP is timeline-and-paper-driven, taking away degrees of flexibility. The ILP does not give people an opportunity to sit down and negotiate. If stakeholders want to negotiate they should plan to begin discussions before the ILP starts.
- The success of the study plan process is dependent on how cooperative the stakeholder group is.
- Agencies believe that negotiating prior to the start of the ILP can work for non-controversial projects. However, negotiations fail if the applicant wants to work on the studies before the process and they do not meet the agencies' needs or work within the agencies' timeframes.
- Initial stage consultation is the first time the applicants find out what the agencies' interests are and the informal nature of those meetings work well. Agencies recommend starting the informal discussions earlier.

Study Plan Determination

- FERC staff has not been consistent in the sense that determinations are not consistent across different projects. FERC should work on better communication internally regarding study plan determinations.
- Fishery issues tend to be more common and sensitive. There are some primary issues that should be looked at from a regional perspective.
- FERC noted that the Commission recently reorganized and hopes that the new reorganization will help provide better consistency with study plan determinations.
- FERC clarified that agencies' needs are analyzed as well. If a study is fairly minor and blends in with what FERC is asking for, then FERC will usually require it. If it is something FERC would not ask for, then FERC will not require it. The applicant is aware that they need a 401 certification and they will need to work with the mandatory conditioning agency.
- There are some instances where applicants thought they would not have to do the agencies' studies and they only had to do what FERC required.
- FERC clarified that if the agencies and the applicant agree to do a study, it can still be done even if it is not in the study determination. Participants felt that FERC needs to explicitly mention that other studies can be done even if they are not included in the ILP study plan determination; applicants and other stakeholders do not seem to understand that.
- If participants disagree on a study request, then they will go to their corners and prepare to go through the formal dispute resolution process. Having collaborative meetings becomes tougher until after the study determination has been made. The ILP timeline does not allow for an easy informal dispute resolution once stakeholders have filed for formal dispute resolution.
- Having state agencies identify that a study is needed in order to issue 401 or other certifications is not always sufficient cause to get stakeholders to agree on conducting that study.
- FERC clarified that the regulations in the Clean Water Act are not the same as those in the Federal Power Act. State 401 processes are approved by EPA; FERC will incorporate the 401, but is not part of its review process. The group agreed that FERC staff should provide a clear explanation about the relationship between these processes.

- An attendee cautioned that if FERC were to incorporate the 401 process into a relicensing, it would take away from negotiations between the applicant and the agency.
- Participants discussed that FERC will preserve its own decision-making authority and leave it to other participants to make their decisions.
- FERC views study determinations as delegated orders. FERC can only require what is in its authority and its purposes under NEPA and the Federal Power Act.
- The study requestors may not be putting as much effort as they need to when they request a study; requestors should focus on showing FERC why the study is necessary for FERC's needs.
- Most applicants do not want to amend the study plans, even though it could resolve disputes.
- The group pointed out that there is confusion on whether there is the option to add or amend a study after noticing that something else needs to be addressed after the study plan determination process. For example, an agency believed that there was not a way to study a species unless the applicant wanted to conduct the study. FERC clarified that the ILP has a step to modify study plans after the first season of studies, which can be requested by anyone, but has a higher bar for FERC consideration/modification.
- FERC should consider who is selected as the third person on the Dispute Panel. In one case, one person from the agency bringing the dispute forward was selected from the roster. It worked out in the long run, but should be reviewed thoroughly.

Segment 4 – Study Plan Review and PM&E Measures

- It can be very challenging to complete 50-60 studies and develop good PM&E measures that could be included in the PLP because applicants run out of time. Even with big consulting teams and ample resources, the applicant runs out of time.
- The study plan review and PM&E measures worked well for smaller and non-controversial projects. It is very tough for the big and controversial projects.
- Applicants have difficulty deciding whether to file a PLP or a Draft License Application (DLA). Licensees have found it challenging to go from a PLP to a DLA because it shifts the focus to negotiating the PM&Es while putting together the license application.
- Estimates show that FERC is receiving more PLPs than DLAs. Some applicants are using the 90 days to develop the exhibits.
- The agencies stated that it is difficult to develop PM&Es without the study results.

Segment 5 – Final License Application and Post Filing Activity

- Some stakeholders assume that they are finished with a project as soon as the application is filed.
- A participant suggested that FERC clarify what happens if there is an appeal of 401 conditions subsequent to or at the same time as the submission of the FLA.
- Every state has its own way of handling 401 conditions in which they may try to piggyback on FERC's conditions or have their own rigorous approach. The applicant should educate agencies about what is going on in the licensing process to make everything as easy as possible.
- One of the advantages of the ILP is that it is more defined and the process can be explained ahead of time. Agencies could fit their own regulatory requirements into FERC's process.
- Consideration should be given to having the NEPA requirements better meet 401 requirements.
- There has been good cooperation between some states in the northeast because everyone was in the room at the same time.

- Agencies in the past have requested that FERC incorporate an analysis for their environmental needs into the NEPA document and if it does not go against FERC's policies, it has been incorporated. FERC should discuss this option with stakeholders early in the process.
- The initial letter that FERC distributes could include a recommendation to look at how the NEPA document can meet state and federal agencies' needs.

Segment 6 – FERC's role

- FERC can do a better job getting more stakeholders involved in the ILP. It is harder for NGOs and others to get involved in smaller projects. When NGOs are involved, it is important to maximize their understanding and over-communication may be better.
- Third party consultants working on FERC's EISs have a tough time getting NGOs involved.
- FERC has participated in many projects and their presence has encouraged a collaborative spirit.
- Many stakeholders do not understand FERC's role since FERC staff sometimes advocate for a particular resource area. Licensees have trouble with FERC staff advocating for particular approaches or solutions because FERC is a decision maker over the resources.
- It is hard for FERC staff to be completely neutral, particularly when they have different backgrounds and interests.
- A clear definition of FERC's role throughout the process is needed.
- State agencies are uncomfortable discussing PM&E measures too soon. One participant suggested that there should be a test or certain criteria that the project must meet before PM&E measures are discussed.
- People listen to FERC since they are the regulator. FERC staff cannot speak freely because their comments carry more weight, whether right or wrong.
- Making the decision to decommission should be determined early on in the process. If decommissioning is determined to be an alternative during scoping, it should be built into the discussions up front.
- FERC should encourage those who are involved to get other interested participants involved. People need to better understand that there are existing tools available to become involved on FERC's website.
- It would be useful for FERC to host a training session for project stakeholders during the scoping session to explain what is involved in an ILP relicensing, the costs associated, and how to communicate. The training session would be beneficial to states if everything was discussed in the open early in the process. The group agreed that it would also be helpful if the regulatory authorities and agencies gave a presentation about their needs during this training session.
- Stakeholders should be directed to the FERC website to view approved comprehensive management plans. Most local groups are not aware of this webpage and do not know what to do with the information. This information could also be added to the initial FERC letter.

Segment 7 – Use of the ILP

The group reviewed feedback from the Effectiveness Evaluation stakeholder interviews and sector teleconferences on the use of the ILP. The following comments and clarifications were made:

- After informally asking for a raise of hands, 7 of the attendees preferred the TLP process compared to the 8 attendees that preferred the ILP. (However, there were more than 30 attendees so at least half did not vote.)
- An applicant stated that he preferred the TLP for original projects because the preliminary permit expires in three years. It is difficult to determine whether it wants to develop the project and complete a license application in that timeframe. If the preliminary permit window were longer (perhaps five years) it would be better.
- The majority recommended a TLP for Original Licenses. For smaller projects that are less complex, the TLP can offer some flexibility.
- If the wants to purse a settlement, most participants suggest using the TLP because of timing issues.
- If applicants are not experienced in relicensing they rely on their consultants to identify the resource issues. If an applicant's strategy is to go through the TLP and also engage stakeholders they may find themselves going through a much longer process because the TLP lacks the tight deadlines of the ILP. The number one benefit of the ILP is having a process that requires the applicant to achieve regular milestones.
- From a small hydro perspective, there is the perception that the TLP would be a lower burden of effort and cost.
- Some have found in talking with small hydro licensees that a majority of the developers do not have experience in the licensing process. Licensees are intimidated by the ILP's tight deadlines. Smaller hydro developers want more flexibility because they cannot make decisions in 30 days or 90 days. The TLP offers more flexibility and does not require an applicant to learn while on the clock.
- Keeping everyone on schedule is the benefit of the ILP.

General Discussion

- CEII is an impediment to monitoring license conditions. One NGO was not able to get an erosion report needed in a timely manner due to misfiled information. FERC should review the materials in Exhibit F and should respond to requests to review CEII documents in an efficient timeframe. Stakeholders should consider contacting the applicant if they are not able to obtain the information through FERC.
    - In one case, an agency was not able to view the applicant's response to the agency's input in a particular compliance issue because some portions of their reports were classified as CEII.
    - FERC should conduct more outreach on what should be classified as CEII.
- One agency noted that if they could change one thing about the ILP it would be that dispute resolution goes too fast.
- FERC should consider making the ILP and TLP options without prior approval. It seems to be a difficult step for some licensees to understand when they have to notify FERC about which process they will use.
- FERC should clarify whether FERC will allow the applicant to make a determination on which process to use before the NOI is filed.
- The applicant should have the option to select whether they should file a PLP or a DLA up to the last minute. It would be helpful to see what is going to fit into your process the best.

Seattle, WA: September 21, 2010

Segment 1 – Communication and Managing Timelines

The following comments and clarifications were made regarding communication and managing timelines within the ILP:

- FERC clarified that pursuing a settlement agreement within the ILP does not automatically allow for adjustments to the ILP timeline. FERC allows modifications to the ILP schedule on a case-by-case basis.
- It would be useful for FERC to put a greater emphasis on involving FERC project staff and key stakeholders early in the process. Some suggested that FERC require early staff/stakeholder involvement. Others suggested using new technologies, such as web conferencing, to involve people in a more cost- and time-efficient manner. Web conferencing is very helpful if the audio is working well, and is particularly useful for information sharing (e.g., presenting study results or editing a document as a group).
- Websites are a very effective tool for informing the public throughout a project.
- In general, applicants should do a better job of identifying and involving stakeholders early in the process.
- The applicant should consider baseline information at the outset of the process needs far before a timeline is developed. They should consider what information is available, and what additional information is needed.
- Doing studies and providing for stakeholder participation are labor intensive and expensive activities. Getting people involved up front and letting stakeholders know that the ILP is more a marathon than a race is a good idea.
- Licensees should adapt to their audiences and offer all forms of communication that fit their needs.
- Licensees should encourage in-person participation whenever possible, especially when addressing substantive issues.
- Licensees should provide materials/documents well in advance of a meeting/web conference/call. It is very difficult to review materials just before a meeting.
- Licensees should use every tool available to get people involved in the very beginning of the process. It is incumbent on the individual to then become involved.

Segment 2 – Understanding the Study Criteria

Study Criteria – Project Nexus

- It would be helpful for FERC to provide a more detailed description of their definition of project nexus. Participants expressed frustration that they do not feel like they have enough information from FERC to provide an adequate description of the project nexus.
- FERC should meet with applicants and stakeholders early in the process to help applicants identify and gather the correct baseline information. Once the baseline is clear, the project nexus study criteria can be more easily applied.
- For the up-front study evaluation, applicants and stakeholders should prioritize information needs by “what studies are absolutely needed?”.
- FERC should provide examples of direct and indirect relationships to a project. This will help applicants accurately define the project nexus to meet FERC’s standards.

Establishing a nexus between the project and indirect and cumulative effects are the most difficult to define.

- The word "nexus" is too vague of a term. It allows for descriptions that go beyond the effects of a project to potentially include pre-filing impacts.
- A clear definition of the project nexus should be provided and formalized by FERC in a written form on the FERC website and in the ILP guideline materials. A definition of project nexus should also be provided in the initial project meeting with stakeholders. FERC currently has a definition of project nexus in the ILP study criteria; however, they are being applied differently across projects so that FERC's definition and the applicants' definition often do not match up. FERC should coordinate with NMFS and other interested organizations to develop guidance that is clear for all stakeholders.
- The applicant and stakeholders should work together early, around PAD development, to ensure that project effects can be discussed up front.
- FERC staff played a helpful role at initial scoping workshops by clarifying a lot of questions about the baseline from both the applicant and stakeholders.
- The applicant should provide an initial approach for baseline information in the PAD. This is the best way for FERC to be non-pre-decisional, but still give guidance to the applicant.

Study Criteria – Estimating Costs and Level of Effort

- It is difficult to estimate or give guidance on the cost and level of effort for proposed studies. Even licensees often do not have a good grasp of how much studies will cost. It would be best to address this in the study plan phase, but it is unclear how best to do this. Those with experience with the process have a better "feel" for the cost of studies, such as Federal and state agencies.

Segment 3 - Study Plan Process

- The study plans should allow the applicant to move forward as study outcomes become available, and not get held up by the process.
- To avoid dispute resolution, applicants should convene all stakeholders and gain agreement on the study plans as they are being developed. In practical terms, what works is convening a group of stakeholders at the beginning of the ILP that continues to work together throughout the process.
- It is helpful when the applicant helps to "break things down" (i.e., explains next steps and details of the process) for the stakeholders to understand.
- Some participants felt that the PAD is not playing the role that it was envisioned to. The goal of the PAD is for the applicant to lay out information that is available. In practice, many applicants include study plans in the PAD. Some participants felt that licensees should put less emphasis on the PAD because licensees are spending a lot of time putting together a document that is not necessarily very important. However, other participants felt that FERC should encourage licensees to include study plans in the PAD and to use the PAD as a forum for defining baseline and project nexus.

Study Plan Determination

- Currently the applicant does not have the benefit of seeing Scoping Document 2 (SD2). It would be helpful for the applicant to see SD2 to inform their development of the study plan (referring to box #6 on the ILP flowchart).
- When FERC makes its study plan determination, FERC should explain *how* the proposed studies fit or did not fit the criteria. It would also be helpful to provide a short explanation of *how* the study plan did fit other criteria. It would be useful if FERC would

provide a more thorough rationale for why studies are needed and how the information gained from the studies relates to the project. It is useful for other applicants and stakeholders to see an explanation for why studies were/were not required.
- Agencies' mandatory conditioning authorities are generally not well understood by stakeholders. Each agency should provide information on their particular authorities to the applicant prior to formal consultation.

Segment 4 – Study Plan Review and PM&E Measures

- The ILP should allow for two years of studies. The literature search and the field studies are equally important. NMFS believes it is often necessary to do more than one year of studies to get quality data, especially for particular species with unique behavior/life cycle patterns.
- The initial and updated study reports (ISR and USR) are difficult from a timing perspective. There is some confusion around the timing of the filing of the ISR/USR, partially because studies are often incomplete when the ISR and USR are due. The USR may not always be useful. Applicant should look at the study plan timeline and flag any timing inconsistencies with the stakeholders and FERC as early as possible.
- It is possible to do studies that require two seasons by first meeting FERC's needs and then meeting the needs of the other agencies, such as NMFS, in the post-licensing phase.
- FERC and the agencies have different needs. More support from FERC to address needs of agencies within the process is desired.
- The ILP does provide for reviewing data needs and data sets. FERC has approved study plans that include multi-year studies.
- Where you have a study issue, stakeholder consensus is needed to support a pre-study period. The timing is tight in the study plan phase because if there is a fatal flaw (e.g., an unusual weather year), the studies have to resolve the issue in two years. In a few cases extending the study period and process might be justified.
- Some participants suggested that FERC consider approving two years of studies up-front.
- Participants commented that the applicant has the responsibility to know what level of information/study is needed.
- The utility of the data is what should be driving the duration of the studies. The duration of the necessary studies should be determined at the project level. There needs to be flexibility in the process and/or with FERC for determining the correct duration of individual studies.

Fostering Early Development of PM&Es

- It is challenging to know the best time to begin discussing PM&E measures within the process. There is a fear of discussing PM&Es before the study results are known. However, some participants felt that it is still valuable to have earlier discussions and ideas "half-baked."
- The Forest Service has standard needs for PM&Es. For them, a lot of the PM&Es can be developed up front.

Segment 5 – Final License Application and Post Filing Activity

- Participants suggested greater coordination among FERC and the agencies on the content of the NEPA document and increased coordination between the USFWS and NMFS on content for the Biological Assessment (BA). It would be helpful for FERC to ensure that all of the necessary information is in the BA.

- Participants suggested a more formal step (i.e., formal request or notice) for consultation with agencies to ensure the necessary information is included in the BA and recommended that FERC act as more of a catalyst to support interagency communication/collaboration on the BA.
- Sometimes the lack of interagency communication is a staffing issue more than an ILP issue.
- FERC initiates formal consultation with a draft application rather than a final application. This causes NMFS to wait until the end of the process to start consultation, which causes timing problems.
- NMFS would like to do consultations early on without being pre-decisional about the outcome. With a NEPA document it is hard to know what the action is. NMFS needs a well-defined action to start the consultation. Having a preliminary BA from FERC would be useful so that when the NEPA document is issued, NMFS will be closer to having a final document. It would be useful for NMFS, USFWS, and FERC to have further discussions to evaluate how this option could work.
- It is incumbent on the applicant to keep all agencies informed throughout the process.

Segment 6 – FERC's role

- FERC is very helpful before the formal consultation period begins.
- There is confusion about how FERC staff view their particular role. It would be best to clarify misconceptions of FERC's role and clarify regulations at the initial meeting with the applicant and stakeholders.
- It is immensely helpful for FERC to be available throughout the process, especially during settlement.
- It is very helpful to hear where FERC thinks the Commission might stand on certain issues.
- FERC is not involved in a consistent manner for each project. It is most useful when FERC is involved throughout the process.
- Participants appreciated that FERC is willing to talk to agencies and stakeholders to clarify issues.
- It is helpful for FERC staff to participate in resource meetings. This provides the applicant with the comfort level that they are providing the information that is needed.

Segment 7 – Use of the ILP

- The ILP might not be best suited for licensing original or small projects.
- The ILP is strict with some flexibility, but it is not flexible enough for the Alaska projects. This is because funding for the Alaska projects comes in bits and pieces. The ILP is more difficult for new projects struggling for funding. The TLP provides better flexibility.
- When the ILP was created, it was more structured for relicensings which have existing baseline data. For Alaska projects and/or original projects, more studies are needed for baseline data and the ILP does not allow for enough time to collect the necessary baseline data.
- The ILP assumes there is a stable project description going into the study development. With a new project the project description is a moving target.
- The ALP was too loosely structured and did not provide the timeframes that some wanted. The applicants wanted more timelines.
- The ILP is good because it encourages issues to be resolved locally.

General Discussion

- There could be better guidance from FERC for what studies should be resolved prior to and post-licensing.
- Additional guidance from FERC on the correct way to go through the process would be useful.
- FERC should evaluate why applicants chose to use the TLP or ALP instead of the ILP.

Charlotte, NC: September 23, 2010

Segment 1 – Communication and Managing Timelines

- Agencies in certain regions in the Southeast may have participated in the ALP or TLP, but have not been involved in the ILP. In some regions of Louisiana, there are state agencies that do not have experience with hydro licensing and do not know how the process works or understand the timelines. Consultants have found it helpful to meet with the agencies to lay out the schedule and explain the process. Many of the agencies are short-staffed, so meeting helps the agencies plan for what is coming up. Participants recommended that licensees meet with the agencies at least a couple of months to one year before the process starts. Consultants have found it important to meet with agencies, especially when more than one state is in involved.
- Most applicants created SharePoint sites or websites that provide updates on meeting notes, alerts, meeting requests, schedule changes, and send meeting reminders. The sites allowed everyone to stay engaged and active by downloading materials and keeping track of meetings.
- It would be good for FERC and NOAA to communicate before the process started to understand each other's interests and identify who will be working on the project.
- FERC could meet with interested participants after issuing the initial letter to discuss how to work through the process before the PAD is submitted.
- Consultants have asked FERC project managers to attend initial meetings with agency representatives to explain FERC's viewpoint.
- Having multiple resource working groups to allow everyone to sit down to resolve issues, discuss misconceptions, and help meet deadlines, is useful. Although scheduling resource working group meetings can be difficult, the working groups are able to discuss study parameters and methods, think about PM&E measures, and analyze issues.
- Stakeholders want to be involved in the ILP process, but do not know how to approach the process and get involved.
- In some cases, with the NRC, for example, state agencies have developed Memoranda of Understanding (MOUs) with federal agencies in order to bring their timelines together so there is more harmony and consistency. FERC and other agencies should work together to revise timelines.
- Having an established communication protocol at the beginning of the ILP that clarifies how stakeholders should communicate with each other can be very helpful. A written protocol can become a part of the record and allow stakeholders to communicate with FERC staff and feel comfortable around ex parte issues.

Segment 2 – Understanding the Study Criteria

- The FERC staff assigned to a project should consider hosting a meeting to explain point-by-point what project nexus is and how the Commission is likely to define it for that project.
- From an NGO's perspective, project nexus is unfairly slanted because the organization puts together a study plan thinking that it meets the criteria, without having an opportunity to talk it through first.
- A state agency representative pointed out that organisms travel and that determining where the project causes effects is a subjective matter.
- A federal agency suggested looking at explaining project nexus from two levels:
    - FERC should develop an overview on project nexus and MOUs; and,
    - Create customized guidance that can be applied when discussing specific projects.
- Often the dispute about project nexus is related to the geographic scope. Stakeholders would like an opportunity for the state agencies and NGOs as well as the applicants to make a case in front of FERC, allowing both sides to be heard.
- If the applicant conducted studies on downstream nexus it was helpful to have the information presented in the PAD to facilitate the study plan process.
- Applicants will not share information with others unless it is required to be included in the PAD.
- Commission staff could encourage applicants to lay out information with scientific fact and rationale in the PAD. Having discussions up front with stakeholders is important for contentious projects.

Segment 3 - Study Plan Process

- NGOs have the impression that their plan proposals do not get the same thorough consideration that the applicants' proposals get. As a result, NGOs feel as if they do not have the power to affect study plan development.
- It could be beneficial to have FERC attend as many of the study plan meetings as possible in the beginning of the process to help the applicant work with stakeholders.
- Better education is needed for study dispute resolution. In one case, a conditioning agency did not have all of the information they needed and disputed six studies. Informally the applicant's consultants met with the agencies and through the discussions they got it down to two studies. The dispute process went well and after a few days, the agency agreed. People met in the middle after realizing that the process could drag on for a while. FERC facilitated the discussions and helped alleviate the tension. The early education component helps reduce disagreements.
- FERC has seen a mix of disputes and the most common dispute is related to the study methodology.
- It is recommended that FERC develop guidance on how to get early studies done to help resolve problems.

Segment 4 – Study Plan Review and PM&E Measures

- Agencies have the option to look ahead at the issues and get the concerns out on the table early. Resolving issues early on in the process will help meet the fast deadlines. FERC needs be at meetings to see how the applicant is working with the stakeholders at the contentious meetings. If FERC does not have a presence at the meeting, the applicant can roll over the stakeholders. FERC clarified that if there is a meeting that a stakeholder believes it might be appropriate for FERC to attend, a request can be made. FERC staff are also able to teleconference into meetings.

- The group asked for clarification on how to modify a study plan after the study methodology did not work. FERC described an instance where there had been disagreements on methodology, and made some modifications to the study plan after the first year of studies, and filed the modifications with the FERC, and FERC approved the modifications. Modifications, such as study methodology, should be filed and approved by the Commission.
- NOAA stated the need to have an agreement with FERC on how to best resolve ESA issues through a MOU or a technical conference in each region.

Segment 5 – Final License Application and Post Filing Activity

- Applicants should work with the 401 conditioning agencies to understand what information the agency will use and the agency's criteria. Applicants can adapt their studies to answer the agency's questions.
- One big challenge is that applicants have 60 days to get their 401 certification in after FERC issues their EA. However, the 401 agency wants to see the EA in order to issue the 401 certification.
- Early meetings need to include a discussion of expectations and the potential for adapting processes, if appropriate. Some agencies' processes are rigid and decided by legislation.
- NOAA suggested having the Biological Assessment (BA) earlier in the process by issuing it before the NEPA document is drafted. The BA should be in the NEPA document and everything could be resolved if the agencies met to discuss.
- If the agencies created an MOU, the NEPA document could have special focused sections to help resolve various 401 and EA issues.
- Agency staff is less inclined to look at an 800-page Environmental Impact Statement (EIS) to find the small pieces of information that are needed. It would be helpful for resource agencies if the EIS were organized by resource. For example "Aquatic Impacts" could be organized by resource, then recreation, and socio-economic issues. The EIS should be more usable for agencies and reduce redundancies.

Segment 6 – FERC's role

- FERC needs to be more transparent. Sharing information about project nexus, insight on how decisions are made and the feedback that is received on the ILP projects would be an improvement.
- FERC should present information about the process in a meeting so stakeholders can understand it before the scoping meeting to help everyone get on the same page. More education and transparency on the study plan process through the development of the environmental process is needed to help stakeholders understand and participate well.
- Resource agencies should develop a presentation for small hydro owners to explain the process and outline responsibilities. In one case, the applicant of a small hydro facility did not know they were required to conduct studies.
- Education, through training sessions and informative materials can help build trust and dispel assumptions.

Segment 7 – Use of the ILP

- The ILP is better suited for small original hydro projects that are not complex. For example, if there is a small hydro developer that wants to build on an Army Corps of Engineers dam, there is a lot of data available and the applicant would not have to deal with a lot of complexities.

- Determining whether the ILP or TLP is best suited for a project can only be determined on a case-by-case basis.
- The TLP does not have rigid deadlines and provides more flexibility.
- The U.S. Fish and Wildlife Service has found the use of the ILP for hydrokinetic projects in the Mississippi region challenging because it is difficult to conduct the studies on time. There is uncertainty about the types of studies that will have to be conducted as new technologies get introduced.
- There are timing issues to get the license filed within 36 months without allowing the preliminary permits to expire.
- Business people interested in making money have to consider that it may take longer than two field seasons and preliminary permits may expire.

General Discussion

- Drought conditions or a hurricane may impact the two study seasons, which may cause the study results not to be available until draft license application is submitted. If it is a critical piece of information, FERC may or may not accept the application until the study results are submitted. Different branches within FERC may approach this type of situation differently.
- The upfront pre-study plan development is a critical part of the process for FERC to be involved in. Having FERC staff attend meetings to understand the geography that is involved and what the study is going to try to accomplish would be helpful to the process.

Sacramento, CA: September 28, 2010

Segment 1 – Communication and Managing Timelines

- The FERC website could be easier to use if projects could be searched for by name in addition to by docket number, as it is set up currently.
- Readily available copies of each existing project license would be a helpful reference for stakeholders.
- Many stakeholders recommended that licensees utilize teleconference and/or web conference technology for meetings. This has many advantages including minimizing travel costs, allowing higher frequency of participation, and sharing documents in real time. One applicant noted that teleconferencing can be efficient, but in-person attendance should still be encouraged for critical meetings.
- Training for agencies on the ILP would be valuable, particularly for those with no or little experience with licensing.

Segment 2 – Understanding the Study Criteria

Study Criteria – Overall

- Having FERC provide additional guidance on the study criteria would help facilitate discussions on study development. This guidance (e.g., when considering project nexus, here are key items that should be considered and why) would be an efficient way for a stakeholder group to develop a common understanding of how to approach study plan development. In addition to policy guidelines, examples and models from real projects would also be helpful.

- Agencies recommended that FERC accept study requests unless no project effect can be proven. This would balance the burden of having a short study season in the ILP.
- In addition to understanding what the impacts are, it might be useful to discuss how impacts can be mitigated before PM&E development.
- FERC and other agencies should do their best to work together to facilitate studies that will be mutually beneficial.

Study Criteria - Project Nexus

- Participants noted that FERC seems to use the project nexus criterion to exclude cumulative effects studies, even though those studies may be useful in setting license conditions. All participants noted that, due to the complexity of California projects and river systems, determining project effects can be difficult.
- To help develop a common understanding of nexus, FERC could provide more details in the study determinations. FERC's view of project nexus can be unclear although confusion regarding nexus has been clarified after the fact through additional conversations with FERC.
- Examples of approved study requests for indirect or cumulative effects would be useful for others to learn from.
- Participants expressed difficulty in defining the project boundary for study requests. FERC staff explained that the boundary, as marked on a map, has no relation to study effects. Study scope is not limited to within a project boundary, but rather are tied to that particular project's effect. Therefore, the scope is different for water, recreation, etc. A discussion early on in the ILP to define scope with stakeholders would be useful.
- For everyone to better understand the project scope and study criteria, FERC should be involved more frequently and earlier in the ILP. The timing of these discussions should be flexible to occur when the studies are being developed, which could be as early as prior to the PAD.
- It would be helpful to have FERC staff with regional expertise who could fully understand the unique aspects, complications, and scope of a project. This would allow staff to provide specific guidance on how to apply study criteria.
- Some participants felt the study criteria were helpful in focusing studies and developing a study plan that can be accomplished within the timeframes of the ILP.

Study Criteria – Costs and Level of Effort

- For cost efficiency, licensees should consider whether there are lower cost options for completing studies, such as using existing agency staff or resources.
- Guidance for agencies on how to develop costs would be helpful, since many do not have access to the same resources as licensees.
- FERC should keep in mind that costs are developed differently by licensees' consultants and by agencies, so it is not necessarily a fair comparison.
- With slight modifications, other studies already being conducted within the project area could be used to inform licensing. This would provide cost efficiency and ensure that the necessary data is gathered.

Segment 3 - Study Plan Process

- Beginning the study plan process earlier on in the ILP helps the rest of the process go smoothly.
- Participants strongly supported active FERC participation through attending meetings, voicing their opinions and making recommendations.

- FERC's early and ongoing involvement can help momentum continue during the study plan development phase of the ILP, when there are many disruptions as the applicant and agencies step back from discussions to produce their filings.
- Many participants appreciated the tight timeframes provided by the ILP, as the timelines create clarity for stakeholders, allowing them to know when steps are complete and what steps are coming up.

Informal Study Resolution

- To help avoid disputes, licensees, agencies, NGOs and FERC should work together to develop studies. While the ILP did not intend for agencies and the applicant to develop study plans separately, this is what is occurring.
- Sometimes, licensees are reticent to move forward with agreed upon studies prior to a study plan determination because they are concerned that FERC will not approve them. This could be avoided if FERC agrees not to go against what a stakeholder group has agreed to.
- Third party, neutral facilitation is integral to coming to decisions in a timely manner. The facilitator provides a needed skill set to plan how to efficiently use the time available to meet certain objectives and allows stakeholders to focus on the product rather than the process.
- FERC's participation helped resolve disagreements during study plan development.
- A collegial relationship with FERC staff is one of the most important things participants can have to resolve disagreements.

Formal Study Dispute Resolution

- Having more detailed information in the study determinations may mitigate the need to enter formal dispute resolution.
- The formal dispute resolution process is so onerous that its existence may motivate participants to reach agreement on their own.
- Having an in-person meeting with other stakeholders about the study in question enables better conversation and understanding and may allow participants to avoid entering formal resolution.
- Additional stakeholders such as agencies and NGOs should be allowed to file formal disputes. This would provide additional, helpful information to the panel.
- In one participant's experience, the Dispute Resolution Panel took it upon themselves to find additional information. This is a good model to use.
- Having agencies with 10(j) jurisdiction allowed to file formal disputes would be helpful and might cause licensees to work more with these agencies to avoid moving into formal dispute resolution.
- During the panel, prepared questions will help key information come to the forefront.
- This phase could be avoided by adding a step in the ILP to hold a "mediated discussion" between FERC and study requestors to better understand positions and opinions. This should be made available to the public so those who were unable to participate can understand the progress.

Segment 4 – Study Plan Review and PM&E Measures

- When the study plan is approved, it should include how to accommodate studies that will be completed at different times. In the past, the process to comment on studies has been unclear because they can be very disparate and staggered.
- Having a schedule for study reports laid out at the beginning of the study season is very helpful.

- By working as collaboratively as possible during this phase, project participants were able to avoid major disruption of momentum while writing their independent filings.
- FERC explained that the study meetings are meant to be checkpoints to ensure the study plan was being followed and to provide an opportunity to amend the study plan. However, it has become a more significant event with people wanting to weigh in formally. This has created some frustration when agencies are unable to respond to studies that are not complete.
- The ILP should allow for flexible checkpoints that align with study reports.
- One participant noted that the ILP diagram should be a minimum of what needs to be accomplished. There are also intermediate steps that help the process flow smoothly.

Phased Studies

- Studies that may need a second year of studies should include the specific triggers or thresholds that would necessitate a second year. It is more difficult for FERC to approve a second year of studies if its need will be determined collaboratively by study participants at a future time.
- Participants noted that relying too heavily on FERC to make decisions for the project should not be advised; it is more important to collaboratively create a plan with specificity that FERC staff can provide input on, as necessary. Collaboration among the participants is the best way to carry out the ILP although FERC's involvement adds more value if there is a contentious process.

Protection, Mitigation and Enhancement Measures

- The applicant should develop proposals that the group can further edit and refine. It is difficult to develop PM&E recommendations as a group for the first time.
- It will likely take a collaborative stakeholder group at least six months to fully develop the PM&E measures.

Segment 5 – Final License Application and Post Filing Activity

- Some participants believe FERC's study needs do not meet the needs of other agencies, particularly those with Section 7 or 401 requirements, and this delays license issuance.
- It is difficult to file 10(j) requirements at the same time FERC is preparing its environmental analysis; perhaps the timing of 10(j) recommendations should shift to occur with comments on a draft NEPA document. FERC staff noted that they want the 10(j) recommendations beforehand to inform the development of the draft NEPA.
- There can be a delay between the time PM&E measures are confirmed and when they actually occur. It is recommended that plans are written in as much detail as possible so their implementation post-filing is easier to follow.

Segment 6 – FERC's Role

- When multiple projects are coming up for relicensing around the same time, FERC should consider conducting a single ILP for those multiple projects. This would allow for increased collaboration and more efficient use of resources. FERC should consider the whole watershed, although this can be difficult because there are often overlapping jurisdictions. A guide on this issue would not only clarify FERC's role, but would help those who are inexperienced with the ILP.
- Participants encouraged FERC staff to look for opportunities to help ILP projects progress and alleviate conflicts when they occur.

Segment 7 – Use of the ILP

- A successful relicensing depends most on having collaborative and cooperative participants. This matters more than which process (TLP, ALP or ILP) is chosen.
- Regardless of the process, participants need to begin early, identify problems and be prepared for a rigorous process.
- The ILP can be easier to understand than other processes, particularly for stakeholders with a smaller role.

General Discussion

- A participant noted that sometimes, particularly with smaller projects, there is disconnect between what is required by the FERC compliance division and what is needed for relicensing. This creates a misconception that obligations under the existing license are waived when licensees undergo the relicensing process. FERC noted that projects should comply with their current license and agreed to look into the miscommunication.