
PUBLIC & TRIBAL FORUMS
ON
HYDROPOWER LICENSING REGULATIONS

TRANSCRIPT OF PROCEEDINGS

Thursday, April 3rd, 2003

9:12 a.m.

at

Hyatt Regency
333 West Kilbourn Avenue
Milwaukee, WI

Reported by Rose M. Coulthart, RPR

A P P E A R A N C E S:

FEDERAL ENERGY REGULATORY COMMISSION:

Mr. S. Ronald McKittrick, FERC

Ms. Elizabeth Molloy, FERC

Mr. John Clements, FERC

Ms. Patti Leppert, FERC

ALSO PRESENT:

Mr. Shawn Puzen, WPSC

Mr. Scott Klabunde, North American Hydro

Mr. Doug Cox, Menominee Indian Tribe of WI

Ms. Mary Ellen Vollbrecht, WDNR

Mr. Michael D. Scott, WDNR

Mr. Dennis Geary, Normandeau Associates

Ms. Angie Tornes, National Park Service

Mr. Bob Neustifter, Consumers Energy Co.

Mr. Lloyd Everhart, Xcel Energy

Mr. Rob Olson, Xcel Energy

Mr. Jeff Feldt, Kaukauna Utilities

Mr. Arie DeWaal, Mead & Hunt

Mr. Paul Strom, WI DNR

Mr. Tom Duane, USDA Forest Service

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MS. MOLLOY: All right. We'll get started.

Thank you all for coming. We have the handy-dandy complimentary brochures I hope you all picked up. The agenda for today -- and be careful about the turning the pages. There is some fragileness to them.

The agenda is on A-1. We're basically here. We've prepared this rule making. We're going to give you a presentation on the highlights of the rule, the draft rule, that we've formed.

And then we want to discuss -- we have certain questions. The Commission has certain questions that it has raised. And we also want to hear if other people have any questions. So we want to answer clarifying questions and then this afternoon or later this morning start to discuss what areas still need some tweaking and what solutions we can come up with there.

And we want to hear what the concerns are and see if we can come -- try and come up with ways to try to resolve them. The bathrooms, the very important thing, the bathrooms are out to the right. And there's a phone out there and some phones down below. And I think that covers really the key

crucial questions that might arise.

First, before we get started with our presentation, I would -- since there's not so many of us and I haven't met some of you, if we could go around and do introductions?

I'm Liz Molloy from FERC and this --

MR. MCKITRICK: And Ron McKitrick, also with with Federal Energy Regulatory Commission out in Atlanta.

MR. NEUSTIFTER: Bob Neustifter with Consumers Energy Company in Michigan. Okay.

MR. EVERHART: I'm Lloyd Everhart with Xcel Energy out of Eau Claire, Wisconsin. Headquarters is in Minneapolis, formerly known as States Power Company.

MR. OLSON: I'm Rob Olson with Xcel Energy out of Eau Claire.

MS. TORNES: Angie Tornes with the River and Trails program for the National Park Service Program here in Milwaukee, one block away.

MR. SCOTT: I'm Mike Scott with the Department of Natural Resources.

MS. VOLLBRECHT: I'm MaryEllen Vollbrecht with Wisconsin DNR, Bureau of fisheries and habitat.

MR. KLABUNDE: I'm Scott Klabunde with

North American Hydro. And we have about 35 or seven projects in the Midwest.

MR. PUZEN: Shawn Puzen, Wisconsin Public Service Corporation, also representing upper Peninsula Power Company and Wisconsin River Power Company out of Green Bay, Wisconsin.

MR. STROM: Paul Strom of the Wisconsin Department of Natural Resources out of Madison, fisheries and habitat program rivers --

MR. FELDT: Jeff Feldt, Kaukauna Utilities, Kaukauna, Wisconsin.

MR. DUANE: Good morning. I'm Tom Duane. I'm with the USDA Forest Service. And I also took a walk a block away.

MR. COX: Good Morning. Doug Cox, environmental specialist for the Menominee Tribe of Wisconsin.

MR. DeWAAL: Arie DeWaal with Mead & Hunt in Madison, Wisconsin.

MR. GEARY: Dennis Geary with Normandeau Associates also in Madison.

MR. MARTINI: I'm Bob Martini from the DNR in Rhinelander, Wisconsin.

MS. MOLLOY: All right. Thank you. And now we're going to have Ron give us a presentation.

MR. McKITRICK: We'll have a couple more people from FERC helping us during the day. Patti Leppert in the back will be helping. And John Clements, who just got here and is changing clothes, will be up here helping us answer a lot of questions. And we're waiting for the technology to catch up with me, which is very unusual.

I think Liz went through this, the yellow handout. But we do have, besides the agenda at the beginning, a copy of the notice. There are copies of the slides that hopefully we'll be going through. If we don't get this up, we'll just be paging through this. And then some additional information with the NOPR, with the redline/strikeout.

I think things that are very helpful on the back page of here is the schedule that we're keeping to, and I think a very helpful part this is at the very end. That gives you a time line, gives you sections as far as where you can find these boxes and the redline/strikeout, some estimate of the number of days between these boxes. So this type of thing may be very helpful to help your review or even following through.

It's coming up this time, so stick

with this. That might help having the presentation.

AUDIENCE PARTICIPANT: Hi, Ron. Can you explain the purpose of the strikeout section version like who did the strikeout and what the status of that is and anything else you can tell us?

MR. McKITRICK: Actually, the person that did all of that will be showing up in just a couple of minutes.

AUDIENCE PARTICIPANT: Oh, okay.

MS. MOLLOY: It was to make it easier to help you guys figure out what we were doing to the regs. For the Federal Register you have to do it in a certain format that I don't know, most people don't find helpful to read it. And so what we've done is take the redline/strikeout that we had been working with and provide it so you can see where the changes fit in the existing regs.

AUDIENCE PARTICIPANT: Okay.

MS. MOLLOY: And where there's a whole new section of course, it's all redlined.

AUDIENCE PARTICIPANT: Okay.

MS. MOLLOY: But that was to show you the additions and what was being taken out. We hoped it would help. All right.

MR. McKITRICK: We're getting close.

MS. MOLLOY: We're very close.

MR. McKITRICK: Well, I'd also like to welcome you. My name, as I mentioned, is Ron McKitrick. I'm FERC staff. Hopefully we're all in the right place. This is the post NOPR workshop dealing with the proposed rule making, changing our regulations. And it's the Milwaukee meeting. Or are we in the right place?

What I'd like to do is briefly kind of go through a chronology of events that have led us to today and where we're headed. I would just like to kind of before we get started mention a couple of things.

One, the reason for this started way before September of 2002. We have gotten a lot of comments prior to and then during this dealing with the existing regulations that we have being maybe not as efficient as they should be, as timely -- timeliness being a problem, also cost, studies coming in too late, those types of things for people to respond in an appropriate fashion.

So with the previous comments and certainly with the comments that we got during this -- these meetings, we have issued on September -- September 2002 a public notice saying

that our intent is to potentially change our regulations.

We then in October and November held a series of workshops with the public, with the tribes, also worked with resource agencies from agriculture, commerce and interior on a regular basis before and during and still to help resolve some of the questions that we have with -- internally with ourselves. We then held a very intensive stakeholder drafting session in Washington D.C. in December 11 and 12th where we actually looked at language to help put together some of the redline/strikeout that we just talked about. And then held additional meetings with agriculture, interior and commerce and then closed the door, finished this up, and issued the notice of proposed rule making on February 20th, 2003. And that's why we're here today.

We're having additional forums or workshops to see, after you've had a chance to read the notice, what types of additional comments, what you like, what you didn't like, are there any changes. We're here to hear that. And in addition to that, another goal would be to see if we can actually maybe reach some solutions. If we hear different opinions, that would help us put together

the final rule.

So we will then have another set of meetings, drafting sessions, at the end of April, first part of May. That will be stakeholder drafting sessions that you have to register for. You can go to our Web site, www.ferc.gov. If you want to attend those sessions, you can register. And we look forward to seeing you there. It will be for four days.

And then we will continue to meet with the resource -- mandatory resource agencies. Then we will also then close our doors, put together the final rule. And our intent then is to have this to Commission the last meeting of July. And if all goes as well, there will be a new licensing process in place.

So with the comments that we've heard before and during, what you have before you then is what we're calling the new integrated licensing process. And the types of things that we are trying to resolve are -- one of the primary things is to get studies done early. So what you'll see is a process that is put together and a schedule put together that will hopefully get a study plan in place and approved.

And if there's any disputes dealing with that, completed within one year. That will give approximately two years to complete the studies and put together the license application. After that application is then filed with us, our intent -- staff's intent is to have the resolution of this and be able to send it to the Commission within a year and a half after the filing date.

I also want to note that the NOPR also proposes a few changes to the traditional process. One, increasing or ensuring public participation. And the other, putting in some information about early dispute resolution within the traditional process.

One of the things we mentioned was increasing efficiencies. Well, how do we do that? And I think there's a couple of things that we probably look to the alternative licensing process as well as the traditional process for things that did work and didn't work.

One of those is that in the traditional process, as you know, it happens sequentially. People talk. You put together a license application. The application is filed. And then we do -- FERC does a NEPA document.

Well, we looked at some of the things that didn't seem to work and that was one. The alternative licensing process helped in that, moving the NEPA scoping process up front. So what our intent here is to do things more simultaneously rather than sequentially. Doing things at the same time so the NEPA process of scoping and starting the environmental document starts at the very beginning of this process within 30 days or within 60 days. We're holding scoping meetings to identify issues, those type of things. So this is one of the things that we're doing, trying to do things simultaneously rather than sequentially.

The other is that we're looking at working with those federal resource agencies that have responsibilities under NEPA, may need to prepare NEPA documents. We hope to work with them, do scoping together, perhaps get some information that's needed by all so that these things can happen, again, at the same time rather than one and then the other.

Again, what we've seen from the ALP and from what people have been telling us is that early participation by everyone, public, nongovernmental organizations, is extremely important. So this reg will ensure that we have

public participation very early on.

Timeliness was another issue I talked about. What can we do to ensure timeliness? One of the things people like are schedules. We're going to -- as you look through this, we have some schedules that we've put together to keep people moving.

The other thing that individuals have talked to us about is that they like FERC participating in the process early. So we are going to participate early and often. Hopefully that will help with the timeliness issue and be able to keep people on track as well as answer some questions and that type of thing. And, in addition, may actually be calling balls and strikes to keep this process moving.

So what we have seen, what I've mentioned, is that we're going to have a study plan put together. That study plan will be done within a year, probably less than that. That study plan will actually be approved by the office director, and then there will be a chance for dispute resolution process, all that being completed within the first year.

Just an example of how we intend to

proceed, if you notice, zero date is actually the filing date that would come before us. As you probably know, the expiration date is 24 months, two years, after the filing of the license application.

A median date for completing in the traditional process has been about 47 months. Our intent is to complete the integrated process a year and a half, 17 months, after the application is filed.

We're looking at the types of things that we've gotten from the ALP alternative licensing process. It indicates that that's probably a pretty good time frame to resolve any outstanding issues and complete our NEPA process and be able to make recommendations.

Some of the issues that we're going to be talking about that we think are important or things of concern are the following: We're going to look at the idea of process selection, cooperating agency and intervening -- intervenor policy, tribal consultation, advance notice -- notification of license expiration, as well as a new document -- kind of an old document but in a new form and when it would be issued, the preliminary application document or PAD. We'll talk about dispute resolution process and some changes in the application contents.

Process selection: If to keep on schedule, we issue a new rule by the end of July, we'll have a new licensing process called the integrated licensing process. So there will be three processes, as we propose now, that you'll be able to choose from -- the alternative licensing process, the traditional licensing process and the integrated licensing process, realizing that we're proposing the integrated process as the default. That's what we'll do unless you decide that you want to do one of the other, either the alternative or traditional.

In that case with the notice of intent, you'll have to come to us and request either the alternative or traditional process. And FERC staff will review that, make -- either approved or deny the request.

We're also proposing some changes in the cooperating agency process as well as some changes in the ex parte rules. As you know now, if an agency wishes to be a cooperator with us in the preparation of our NEPA document, they have to agree not to become an intervenor. With that, I think you'll see that we have very few agencies agreeing to be cooperating agencies with us in preparation of the NEPA document.

Our proposal is that you can be a cooperator and also, if you choose, become an intervenor in the process. The way we are going to do this to maintain fairness in the process is actually change some of the elements of our ex parte regulations. Specifically, what you'll see, if the cooperating agency is working with us and brings new information to the table while we're working together, that new information or data will actually have to be -- will have to be made public so that everyone has a chance to see what that new information is.

Any kind of discussions that we have will be -- will remain between us. But you'll see the results of that in any NEPA document that is issued.

Can we get questions after so I can just kind of go through this? And we'll have a chance to clarify this. So that we just don't get too far off track.

AUDIENCE PARTICIPANT: Sure.

MR. McKITRICK: One of the things we'll probably be talking about tomorrow but I want to bring to your attention is tribal consultation. What we're proposing is a couple of things. One is to --

before the notice of intent comes in, if there are tribes that are affected by this process, we intend to send out an early notice to them telling them that there will be an application coming forward. This will give us a chance to talk, to understand each other, understand each other's procedures and processes.

One of the things we're interested in is perhaps how far in advance should we be sending this notice out. The other thing is that we're actually going to have a new position put into place called tribal liaison. And we'll be looking for comments dealing with what should that person's qualifications be as well as maybe some of the responsibilities.

Another thing that we intend to change is also early notification to the licensee. This will be in practice and not regulation. But with the realization that there is a lot to do before you file your notice of intent, we want to make sure that the licensee understands that there are now three processes, which one will be the default. You'll have to prepare what we are calling the preliminary application document or PAD that we'll talk about in just a moment as well as file your notice of intent.

So there will be an early notification to the licensees dealing with those issues.

Preliminary application document that I've been talking about or PAD is I think very important and in some aspects new but not really. Those of you that are familiar with the traditional process where you prepared initial consultation document or, in the alternative process, the information package, this is similar to that but not exactly. One of the major changes is that that document will be filed with the notice of intent. So that information is going to have to be collected early, put together, and then distributed to all the stakeholders with the notice.

In addition to that, the format that we're looking for is that of a NEPA document. I think you'll notice a trend here is that we're trying to put documents that are available to everyone in the form of the standard NEPA document from the very beginning that can follow through change, contract, expand, be added to, so that when the application is filed, it's more or less in the form of a NEPA document.

The things that we had hoped this PAD does: It's, one, to help the stakeholders identify

the issues that need to be discussed, the studies associated with those issues and, of course, have the NEPA format before so that we can follow this through. That will help us initiate scoping very early on in this process.

PAD is one of the things that we're looking for, specifically comments. There's a lot of information in there. You need to review that and see if it's what should be in a preliminary application document.

The study dispute resolution process is really kind of in two forms. It starts with the review of what you see in the NOPR is what we call study plan criteria. I'm not going to go specifically into those. But I think they're probably one of the most important elements of this proposal. A lot depends upon those. I would ask you to review those criteria to see if they're adequate because this is what a lot of the information will be based.

Those people requesting studies should then -- this should help them to see if they're the types of studies that need to be asked to resolve issues associated with this project. In addition, then we will then start more or less an informal

dispute resolution process by putting together the study plan.

The -- we'll request that the licensee put together a draft study plan, looking at the requests. Then there will be an opportunity for all stakeholders to get together to review the studies that are being done, to resolve differences prior to the applicant putting together their final study plan. That study plan will then be submitted to the Commission or to the office director for approval.

If there -- if those agencies that have mandatory conditioning authority, including the states that have 401 authority and any tribes that may have 401 conditioning authority, if they still do not agree that this is adequate for them to submit mandatory conditions, we have a procedure set in place so that those can be resolved early also. It won't be drug out during the process.

And this is more of a formal dispute resolution process of which a panel will be put together. That panel will include a FERC staff person that has not been assigned specifically to your project. In addition, a resource agency person from the agency raising the question or the dispute. Also that person will not be associated specifically

with this project. And a third party neutral.

They will then get together, review the dispute in the context of does this meet the study criteria. Their review will be of the context of this -- how does this dispute of the study, does it meet the requirements of the study criteria. If it does or doesn't, they'll put together their findings, submit that to the office director.

The office director will then have a chance to review those findings as well as put it in the context of the existing law and policy and practices of the Commission and either -- and make his finding of should this -- resolve this dispute. The resolution of this, resource agencies have agreed that -- the federal resource agencies have agreed that this will be binding.

Another additional type of thing that we're looking at is actually changing the application contents, a couple of things that were done. One, we polled staff, FERC staff, saying, you know, what are some of the things that every application that comes in, what do you always ask for additional information. Why do that? Let's just put it as a requirement in the application.

And so with that, as a couple of

examples, we're going to be asking minimum/maximum hydraulic capacity, information about the cost to develop the license application and other things that will be a requirement or a change in what you have to do to file when filing the application.

In addition to that, we're going to change the requirement dealing with project boundaries. As you probably know, some minor applications do not require project boundary information as well as exemptions. Now everything, majors/minors, will require exemptions project boundary information.

In addition, what we're trying to do is, again, kind of have this information from, as I said, from the very beginning filed to us in the form of a NEPA document. We think this is a logical way of looking at things as well as it will be helpful to staff when it's filed to pick that information up, see where it is, and continue or start the NEPA process. The types of -- the general format is, as you would expect, looking at the affected environment as well as having an environmental analysis in the application, any proposed mitigating for enhancement measures, looking at unavoidable impacts as well as a developmental analysis, looking at the costs as well

as the economic analysis.

Finally, what I'd like to do is before we get started in a very important part of this is actually hearing your concerns dealing with this NOPR is to kind of bring to light some of the concerns that we have. I'm just going to mention a few of these. You can see in the NOPR in Appendix B of this where we actually pull those things out and then give you cites back to NOPR that may help you focus on some of our concerns and see if they're the same as yours. But I do want to go through a few of these.

One, are the content -- contents of PAD, preapplication document, appropriate. Again, you need to probably read through this. We're asking for a lot of information. See if this is what should be included.

What, if any, criteria should be considered in determining the use of the traditional licensing process. We do not -- I think as you read through this, the criteria is, is there good cause. Should there actually be some criteria developed that FERC staff looks at to determine if they should approve or deny the traditional licensing process. The alternative licensing process, there's procedures in place. And that will stay the same.

As you have had a chance, I'm sure, to read through, hopefully the study criteria, as I mention, that's a very important part of this. I'd encourage you to read back through and see if those are appropriate, if they should be added or changed. I think it's a very important part of this.

Modifications to dispute resolution process that we're proposing. There was questions from a lot of folks that during this -- during these meetings of should the resource agencies provide preliminary recommendations and conditions prior to the draft or final license application. Are the recommended time frames associated with the proposed integrated process adequate?

As you look through this, particularly in the first year, the schedule is very busy. See if this seems to be appropriate. There is questions raised also during this. Is there really a need for a draft license application? Are the recommended deadlines for filing the 401 water quality application appropriate? What we're looking in the ALP and the integrated licensing process that -- that will be filed with the license application, our feeling is that there will be a lot of work, working together, so that that should be done at the time the

application is filed. On the other hand, we're looking at the traditional licensing process, that being that they're ready for the environmental analysis time.

I didn't specifically mention anything in my presentation about small projects, but it has come up in some of these meetings that maybe there should be some special criteria or information or regulations put in about small projects. If you -- if that's a concern of yours, we would certainly be interested in hearing those.

And, last, we're looking probably tomorrow but certainly today about anybody have any ideas, is there any proposals needed with the early contact period dealing with the tribes as well as any recommendations regarding the roles and responsibilities proposed as the FERC tribal liaison. With that, I think what I'd like to do, and hopefully with responsive panel, is to seek any clarification of the slides that were presented.

After this we'll have a short break.

And during that break I would encourage you to think about what your questions are, come back from the break, try to get a list of your questions and prioritize those so that we can then come back from

lunch and have fruitful discussion about your concerns as well as maybe seek any kind of consensus about how to resolve those.

So with that, is there any questions about the slides that were presented? And I'd ask -- this is being -- I'm sorry. I didn't mention at the beginning that this is being recorded. There will be a transcript. You all did very good at the beginning about giving your name and who you're with. There will be microphones if there's a question. Each time that you have a question, please give your name and who you're with so that we can get who's asking the question. In the back?

MR. MARTINI: This is Bob Martini from the Wisconsin Department of Natural Resources. I would like you to describe if there are any changes proposed in the 401 water quality process or deadlines in the licensing process. It looks to me as though there isn't much of a change proposed, but could you go over what your understanding is with the current strikeout version of the rule and any changes in the water quality cert process?

MR. McKITRICK: Sure. I think I'm going to probably relate most of these to the primary author of a lot of this. We're very lucky to have John

Clements. John?

MR. CLEMENTS: Okay. Hang a second here.

That's one I haven't looked at in a while.

MR. MARTINI: That's good. Leave it alone.

MR. CLEMENTS: The issue we have with that is I believe what we're proposing is that -- and I'll check this as we go through it. The idea is that when you've gone through this prefiling consolidated integrated process, by the time you get to the license application, that all the information that's going to be needed for water quality certification should be there. And the issue we're having is whether -- who should continue to require the water quality certification to be applied for at the time the application is filed or whether a later date is appropriate.

And the other date that's been suggested -- again, you may have put it in here for one or more of these processes -- is when the REA notice is issued. The ready for environmental analysis. The premise behind that is that we issue the REA notice when the record is complete in our view. And at that point we would ask for mandatory terms and conditions or ten-day recommendations. And several of the states have said you should not ask

for the water quality certification application to be filed until then.

And then in Sacramento last week we had the California agencies say that we shouldn't ask for a water quality certification application until after the NEPA document is completed, which is not something we had even contemplated because that comes so late. The --

MR. MARTINI: The reason I ask is that under Wisconsin rules, we must have a complete application. Otherwise the application could change throughout the process. Our rules say that we should be acting on or evaluating the complete application, the final application. So we wouldn't want the clock to start from FERC's point of view before the final application is filed and before all the available information is finalized.

We then have 120 days to issue our 401 water quality cert. After we receive what we consider to be a complete application, we have 30 days to determine if the application is complete. If it's a draft application or if there's something that hasn't been added to it that's incomplete, then, you know, we can't start our analysis until that occurs.

MR. CLEMENTS: Okay. Then it kind of

depends on how you look at it. Under either theory of this, it's entirely possible the record will be complete and, therefore, the application will be complete when it's filed.

The thing that -- that's got some people hung up is the idea by the time the application is filed, there may be outstanding data that's not yet been complete. And that relates to water quality certification. And those entities would say, in that case, certainly at a minimum you need to hold off requiring the cert -- the 401 application until the REA notice is issued because that's the point where your record will be complete.

So I'm actually at the section, so hang on a second here. Let me -- (he's reading)

MR. MARTINI: Another concern of ours is if the applicant can modify the license application, then we don't consider it a complete request for us. We want to make sure that it's after the point when the licensee could modify its application.

MR. CLEMENTS: Modify it in -- with respect to water quality concerns or any modification or?

MR. MARTINI: Well, the final application, whenever the applicant's final application is, that's where we want to start our 401 water quality cert

process.

MR. CLEMENTS: We certainly wouldn't expect it to be done in a draft application.

MR. MARTINI: We wouldn't want to come back, you know, and have it done two or three times if there's a change later on.

MR. CLEMENTS: As a practical matter, that to me hasn't been a concern. The only time I've seen -- except in very, very rare instances, the only times I've seen applications for new licenses change after they've been filed is when there's been some kind of a settlement discussion. And then they'll file a settlement agreement.

And what will happen typically then is there will not have been a 401 issued anyway. And then the agency will issue a 401 based on the settlement. And that's just becoming standard practice.

MR. MARTINI: Sounds good.

MR. McKITRICK: Yes?

MR. DUANE: This is Tom Duane with the Forest Service. On this resolution issue, you talked about a neutral party. Can you define what would be a neutral party?

MR. McKITRICK: Sure.

MR. CLEMENTS: The theory behind that is that it would be someone that's -- it could be someone from one of the agencies involved in the dispute or from another federal agency or an academic say, you know, a university professor or conceivably a consultant. But I think in my mind at least -- and it's not very well defined here -- we'd love to hear about that. It would have to be someone who is -- doesn't have an interest in, you know, the outcome, certainly a financial interest of course.

But there might be an institutional conflict of interest. And we wouldn't want that. So the idea is that we would maintain basically a registry of people who are -- who have volunteered to serve in this capacity. And at the time that a dispute arose and they were contacted by the other two panel members and asked to see if they would serve. And if they were agreeable, they would at that time have to submit another -- or they would have to submit a -- a statement that they have a -- don't have any conflicts of interest.

And we have those kinds of things more or less in place for our contracting efforts. But it would be someone like that. And there's been some concern expressed here and there about, you know, how

you can ensure that kind of neutrality. But that's our -- that's our working premise.

MR. DUANE: Sounds very good. Thank you.

MR. CLEMENTS: Glad to hear somebody say that.

MR. McKITRICK: Right.

MS. TORNES: I just have a follow -- it's Angie Tornes with the National Park Service. About the third party neutral party panel member, I was curious if the agency could suggest somebody to then apply or would they have to select from the list that FERC has approved?

MR. CLEMENTS: Our working assumption is that there would be a standing list. And of course it would have to change, you know, from time to time. I'm sure people would sign up. And then, you know, somebody would come to them and ask them can you serve, and they'd say, gee, no, my kid's got the flu or something like that. But I don't think, as a practical matter, there would be a problem with adding somebody to the list on very short notice.

The only thing we would be really concerned about is the neutrality.

MS. TORNES: Right. And I'm sure that will have a whole set of criteria or some evaluation

before you have to establish that neutrality.

MR. McKITRICK: (Pointing.)

MR. NEUSTIFTER: Bob Neustifter with the Consumers Energy Company. Also on this neutral party provisions, I think I noticed that if the neutral can't be chosen within a certain amount of time, the other two just go ahead. But what if the other two go ahead and you can't get sort of a majority opinion of the two?

MR. CLEMENTS: Well, I think what would happen in that case is that you would probably get, you know, basically -- I would hope that they could work well enough together to come up with a written statement of their differences of opinion on whether the criteria had been met and why and submit that instead.

But there was -- there was a great concern in trying to make this thing work, that it has -- the train has to keep moving. And so that if you can't get somebody, you know, within the allotted amount of time, you have to find a way to move forward.

Some entities have suggested that -- that everything should just grind to a halt until, you know, a third party neutral can be agreed on.

And then other parties will turn around and say, well, of course that opens the door for people to play hard ball if they want to try to gum up the works. They can withhold consent as a bargaining tactic. And, you know, there's all kind of permutations I'm sure you're capable of imagining.

So that the idea was that we would just try to have the two go forward and in as collegial a fashion as they could and at least articulate their differences if they have any.

MR. NEUSTIFTER: And suppose you could end up with that even if you have a full panel of three.

MR. CLEMENTS: God forbid we could get a three-opinion panel. But we were sort of hoping the neutral would find a way to fall on one side or another of a dispute.

MR. McKITRICK: (Pointing.)

MR. DeWAAL: Arie DeWaal of Mead & Hunt. John, could you elaborate a little bit again on the dispute resolution panels, the rationale as to why the applicant himself would not necessarily have representation on there, on the panel?

MR. CLEMENTS: Well, the theory of this is that the purpose of the panel is to resolve a dispute between two agencies -- the Commission and either a

federal or state agency or arguably a tribe once in a blue moon -- over what is necessary to establish the sufficient record on which to make a decision.

And these agencies are in a different position than any other participant in the proceeding because they have to support their decisions based on substantial evidence. And that sets them apart from everybody else. So/but there was also a recognition that the applicant is going to have to pay for whatever comes out of this. And in that sense, it has a special interest that, you know, someone like say American Rivers doesn't.

American Rivers can make a recommendation to do a study. But it doesn't have any statutory obligation to support it. Its only interest in the outcome of the dispute is whether or not certain information that it would like to see in the record is in the record. But the applicant is, you know, has a greater -- has more risk here as a result. And so it was felt, under those circumstances, it was appropriate to have the applicant be able to weigh in. But the dispute wouldn't be between the applicant and the Commission. It would be between the agency which had requested the study and the Commission.

And so that's why the panel was set up that way. That's our thinking.

MR. MARTINI: Bob Martini from DNR. It's really important, of course, to make sure all the necessary studies are done. And I think it's a good idea to have this dispute process built in so that more of these disputes are taken seriously and mediated and resolved early in the process.

But it's just as important that the other end of the studies, when there are disputes on interpretation of results that can often be two or three different interpretations of the same data, and those -- the interpretation of those results then end up determining what eventually appears on the final license.

In the past we've had -- we've been dismissed by FERC on a number of issues where we haven't even gotten a chance to make the case. We haven't had a discussion with FERC staff on that issue. And submitted information is basically then dismissed.

Is there a chance to get the -- a disputes process or resolution process at the end of the study here in order to go over the results as well?

MR. CLEMENTS: Yeah. We've built that in in a couple of ways. And the first way is kind of structurally that the working assumption here is that you have a couple years of field studies. I know there's a lot of dispute as to whether that's efficient or not. But just assuming that's the case, at the end of the first year of studies, there's a requirement for the applicant to submit basically sort of an interim report on study results and circulate it to the agencies and the other participants. And then there's a meeting where they discuss that.

And at that meeting or in this -- in that context they can discuss whether the studies are finding the information they were designed to provide or whether they're being correctly conducted and that kind of thing. If there's a dispute over that, I'm --

MR. MARTINI: Will FERC be present at that meeting and people that are familiar with that issue?

MR. CLEMENTS: Yeah. The role of the FERC staff here -- let me just step back here and step forward again. The role of the FERC staff is going to be in large part like that of another party. When the NOI is filed and the PAD, FERC staff are going to

be assigned. And those people are going to be -- they're going to be coming to the meetings. They're going to be submitting comments on the draft study plan. It will be just, and for practical purposes, I think as though FERC staff were a party. So the FERC staff will be in there at those meetings too weighing in on these issues.

Now, let me get to the specifics. I got to go to part 5 here.

MR. MARTINI: While you're looking for part 5, is that FERC staff are then going to be FERC contact person for the license for the entire process so that, for instance, if a citizen has a question about where we are in the process or what the issues are, that person's name could be given to that person so that they could get these questions answered? Or if the agencies have a question about where we are in the process, that staffer would be the FERC contact point throughout the process?

MR. CLEMENTS: Those people should be fully informed. We might have them assigned now as we do like project managers and there's like a fisheries person and maybe a recreation person. But those people on the staff would be responsible for participating in the case. It's not just monitoring.

They would actually be participants.

So anyone ought to be able to go to them. And if the person you're asking doesn't know the answer, they ought to be able to point you immediately to the person who does have the answer. So --

MR. McKITRICK: I know it's a fine line here between clarification of the questions and then actually having a discussion about the issues you're concerned about. I don't mean to -- we got time here. But I'd ask you to kind of keep it to the slides. And then we can have a full discussion later on about some of these other issues. But let John respond to this.

MR. CLEMENTS: If you look in at 5.14 on the conduct of studies, I think that will give you a pretty good direction or pretty good understanding of where we're going. We don't call these implementation matters dispute resolutions, but there is a provision in there for resolution of disagreements. We call them disagreements there to -- to separate them from this formal dispute resolution process we were talking about before.

So there's -- there's a mechanism built in there throughout, you know, the period where the studies are being conducted.

MR. McKITRICK: (Pointing).

MR. SCOTT: Yeah. I had a question. This is Mike Scott from the Wisconsin DNR. In your presentation you had said that during the study dispute resolution that the 401 water quality cert process and the dispute resolution, therefore, would incur informally and then later on formally.

So my question is, is FERC contemplating a situation where a water quality certification is proposed to be issued by a state agency and FERC has a concern with it and FERC calls for an advisory panel to discuss and resolve the dispute that they have with the water quality certification that has yet to be issued?

MR. CLEMENTS: No. This doesn't contemplate that. All this -- the only disputes that would be resolved here are disputes over what the Commission is going to require the license applicant to do in terms of information gathering and studies.

MR. SCOTT: Thank you.

MR. CLEMENTS: And if we -- just for clarification because there were some questions about this elsewhere. The -- the resolution of a dispute here at FERC over such an issue doesn't bind a state 401 agency.

We could go through formal dispute resolution and say, you know, at the end of the day it's FERC's opinion that, you know, they don't need all of this. Here is 80 percent of -- we think that's perfectly sufficient for purposes of resolving this matter and establishing an evidentiary record. And the state could come back and say we want the other 20 percent, and we're going to insist on that in our separate 401 certification proceeding. And that's just the way it would be.

But we were hoping that by providing this venue, that state water quality agencies would come and use this process and find that it works satisfactorily and that we could hopefully also move forward and a lot closer to a locked step than we do now.

MR. McKITRICK: Yes.

AUDIENCE PARTICIPANT: On page --

MR. McKITRICK: Just name and tell about --

MS. TORNES: I'm sorry. Angie Tornes, National Park Service. On page B-6 you have in the middle your slide is application content. And refer to project boundary information. Do you mean that's actually in the PAD or in the application? I mean I assume it's going to be in the application

regardless. But isn't -- shouldn't that also be in the PAD?

MS. MOLLOY: To the extent known, it could be. The PAD is designed to collect existing information. Now, for, you know, so to the extent they know or propose a certain boundary and they know early on what it will contain, it could be in the PAD. You know, but this would be currently for minor licenses and exemptions there is no boundary. So this is changing that.

MS. TORNES: Right. But I've seen several applications come through without a very well described boundary. And for people to know what area they're going to be dealing with, they have to know what the boundary is and what's included in that.

MR. CLEMENTS: The idea is that this will evolve by the time they actually file the license application. They'll have to have defined, you know, with great specificity the project boundary. One of these Geo reference maps we're going to require.

MR. MCKITRICK: I'd go back -- and I can't answer your question directly, but go back to all the requirements within the PAD. And if that doesn't seem to meet expectations of project boundary information, then that may be a good comment to give

to us, something to look at.

MR. PUZEN: Shawn Puzen from Wisconsin Public Service. Excuse me. I guess I'd like some -- I have a question as to in one of your slides you indicated that the applicant provides comments and information during a dispute resolution process.

Can you give me a little more clarification on exactly how you intend that to happen or, you know, where in the process, the dispute resolution process, that happens? Do you make a request to us as the applicant for that or? Just give me a little bit of a background on that.

MR. CLEMENTS: We've got a section in there that provides a specific number of days after the notice of dispute resolution has been filed that the applicant can provide the information to the panel. And it's not a whole lot of time because, as you can see, it works on a very short time line.

But I think our working expectation is that those submissions by the applicant would be written. And when the -- when the panel is put together, notice will be given of who the panelists are so that the applicant will know exactly who gets the information so that it can do that in a timely fashion.

We've left the idea of how the panel gathers its information a little bit open. So it's conceivable that a panel could, you know, want to actually meet with the applicant. And that would -- could probably be okay under here. There are a lot of some real -- real little implementation details that are going to have to be worked out over time because of, you know, concerns about, you know, cost and travel and how you get this done in 90 days and things like that.

But my -- my thinking is that it would probably be a written submission within the time frame that's described there.

MS. MOLLOY: And the time frame's on D-63, it's about the middle of the page, 25 days following the notice of the dispute.

MR. PUZEN: Okay. And I may be getting into this afternoon's discussion a little bit so stop me if I am. But is that something that's possible for the application -- applicant to request a meeting with -- with the -- with the dispute resolution?

MR. CLEMENTS: It might be a good idea to just, you know, when we -- when we start identifying our issues and prioritizing them, bring that one up. And we can get at the list and see who wants to deal

with that.

MR. McKITRICK: Okay. Yes?

MR. MARTINI: Bob Martini at DNR. You said in your presentation that Exhibit E would take on the characteristics of an EA document. If Exhibit E is deficient, would you then go back to the applicant and try to make sure that all the elements necessary for an EA document eventually appeared in Exhibit E? And do you intend to make Exhibit E essentially the EA document?

MR. CLEMENTS: Well, the Exhibit E should evolve into the EA document. It should look very much like an EA when it comes in. And, again, the assumption here is because we all start together at the beginning and we've had the study plan and we've resolved the study disputes and we've had interim meetings while the studies were going on, that by the time the application is filed, if things go as they should in most cases, we will have a pretty complete record or maybe a completely complete record.

And, therefore, the Exhibit E should contain all the information necessary for -- for the preparation or, you know, completion of the NEPA document. And if it's not, then, you know, we've got a problem that we're going to have to deal with in

that case. I would think if it were for some reason deficient, we would -- I suppose on a -- in an aggravated case, we might have a deficient application which is something -- or we would pull off the REA notice until the information that was necessary to complete the Exhibit E arrived by whatever means.

MR. McKITRICK: (Pointing.)

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. With regard to the slide that dealt with changes to the ex parte rule, Ron indicated that if a cooperating agency brings in new information, that would be disclosed, made public. Is that only if the agency that brings in the new information is an intervenor or does it -- or does it happen even if the cooperating agency is not an intervenor?

MR. CLEMENTS: I think the intention is that if it's any cooperating agency, whether it intervenes or not.

MR. NEUSTIFTER: Okay.

MR. CLEMENTS: In fact, I'm sure that's our intention.

MR. NEUSTIFTER: Okay. Thank you.

MR. CLEMENTS: And I'm going to check it again to make sure it says that.

MR. McKITRICK: (Pointing.)

MR. PUZEN: I guess -- this is Shawn Puzen from Wisconsin Public Service again. I just want to add to his question.

I'm assuming that new information is considered any information that's not already part of the record; is that correct?

MR. CLEMENTS: New information in what context?

MR. McKITRICK: It's cooperating agency.

MR. PUZEN: In the slides you indicate that new information brought to the table will need to be made public. And I guess I'm assuming that's any -- anything that's not already in the record, any type of a --

MR. CLEMENTS: Yeah. That would be the case. I'll just give you an illustration of say we're working say with the forest service as a cooperating agency. And in the context of reviewing some piece of the draft EA, they came to us and said, well, here's the information that's there, but here's some other study that we're aware of that we think is relevant and influences the outcome and you should look at this as we move forward on this. We would say and here's what we think it means. We would say

fine. We'll take it, but we're going to have to put it in the record so that everybody else knows that we're looking at that.

MR. PUZEN: Okay. So it would be information that isn't in the record for this particular project? I mean it could be a court case or something else?

MR. CLEMENTS: It's any piece of information that -- that the cooperating agency wants us to use in evaluating the application we would put into the record.

MR. PUZEN: Okay.

MR. CLEMENTS: Which just serves as fundamental fairness. We don't want people to get an EA and all of a sudden there's all this stuff that they've never seen before.

MR. PUZEN: Okay. Thank you.

MS. VOLLBRECHT: Mary Ellen Vollbrecht, Wisconsin DNR. It's probably a very basic qualifying question on this same issue. What is the form or where is the policy and body on intervention or cooperators currently not being allowed to intervene? Is that in a different rule?

MR. CLEMENTS: It's in our practice and it's been referred to in a number of orders. It's

not in the regs anywhere.

MR. McKITRICK: Okay. Bob?

MR. MARTINI: Getting back to the ex parte issue again, you talked about cooperating agencies and other agencies providing the information. What if the applicant provides additional information, would that also be subject to the same treatment?

MR. CLEMENTS: Anything that the applicant provides would have to be filed and served on the parties.

MR. MARTINI: So that's subject to the same rules and regs?

MR. CLEMENTS: Yeah.

MR. MARTINI: All right.

MR. McKITRICK: Anything else? Those are some very good questions. I think what I'd like to do is give you a chance to take a break. While you're doing that, think about maybe some of the questions that we have, some of the questions that came up here, some of the questions that you've held and would like to discuss later on.

And we'll have an opportunity to list those after you come back from the break, have a chance to prioritize those from actual voting to see where the most interest is. And then we'll take from

that later who's most interest -- the highest number and start that discussion and move through them and complete this when we complete it. We have until four this afternoon.

So I got about almost 10:25. Why don't we get back at quarter or quarter till?

MS. MOLLOY: Quarter till?

MR. McKITRICK: What do we got? I got 10 --

MS. MOLLOY: 10:30.

MR. McKITRICK: Okay. 10:35. And we'll get started at quarter till.

(Short recess had.)

MR. McKITRICK: What we'd like to do I think is hear your issues, list them and then prioritize them. And then have a chance to spend the rest of the time that we needed to either do one or two or three things. It's an opportunity to ask staff what was your thinking when you put this -- so it will help clarify how you should approach this. If you fully understand it, give us your concerns.

If you seek -- have an opportunity after you hear people discuss this, if you might have a new idea, don't hold back. Give it to us now. Early is better. But certainly you have a chance to

file those comments with us by April 21st.

Before we get started on that, I might add if some of you have staff that is back somewhere, it looks like we have a few extra copies of this. And if you find this helpful, don't be shy. Take a few copies with you. You're not going to be jumped for doing that. So please feel free. We do have copies of the sign-in sheets in the back. You can take those any time that you want.

Liz is going to help us as we go through this and list your comments as we hear them and so that everybody can see what we're going to be discussing. I'd say that we're certainly interested in yours. If anybody on staff feels like they would like some further clarification or chance to speak to something, feel free to list something. That would be fine.

MS. MOLLOY: And if you want to talk about any of the questions we had listed in the back, mention that when we put up the list. But we won't be putting those up separately.

MR. McKITRICK: Right. Now, I assume that, just so we're clear in all of this, that nobody has any questions? But I don't believe that. Okay.

AUDIENCE PARTICIPANT:

MR. DEWAAL: Well, we'll start. Is this on?

MR. McKITRICK: The on and off switch is at the bottom.

MS. MOLLOY: And, again, remember to give your name.

MR. DeWAAL: Yeah. Arie DeWaal with Mead & Hunt.

MR. McKITRICK: Yeah. It's not on.

MS. LEPPERT: I'll get another one.

MR. MARTINI: Is there anyone that can't hear anybody with those?

MR. McKITRICK: The court reporter can't. So that's why we're doing it.

MR. DeWAAL: Arie -- this isn't on either, is it?

HOTEL EMPLOYEE: Just a second. Hold on.

MR. McKITRICK: Try it again.

HOTEL EMPLOYEE: There we go.

MR. DeWAAL: Is it on? Arie DeWaal, Mead & Hunt. I guess I'd like to start the discussion off in relationship to the preapplication document and some of the questions that revolve around that, understanding that the preapplication documents wouldn't be required no matter which of the three

processes you elect to go with.

In viewing that information, I guess the initial review and reaction that I had to that is that it appears to be information that you would normally require in Exhibit E of a major unconstructed project. That tends to ring alarms to a number of smaller projects that you're going to be asking to generate information that as they go through a licensing process is not typically even going to be required in the license application.

And I'm wondering if there's any thought as far as -- I know the exemption applications are -- are still being or are going to utilize the types of information that you usually do in the old ICP. Is there something here in regards -- you thought about, you know, commence with -- with regards to the scope of the project in regards to the PAD?

MR. McKITRICK: So the PAD make -- is there a need to make it appropriate to the scaled project or what is it, one size fits all kind of thing?
Good.

MR. MARTINI: Bob Martini from DNR. In other words, many other small projects or small rivers have just the same kind of data needs to

understand the impacts as the large projects. I agree with the idea of doing a site specific evaluation of what's needed. But to say that a small project needs less data or can somehow be automatically scaled down from what you're required from a large project, leave some considerable holes I think.

MR. McKITRICK: Exactly. Okay. So it's just because it's small doesn't mean it doesn't have an impact.

MR. GEARY: Dennis Geary, also referring to the content of the PAD, particularly the requirements that are in I guess it's 5.4 C-2 paragraph K that the way I read it requires the applicant to reproduce historical documents such as previous applications, previous licenses, 401 certifications. I remember the size and some of the applications from the class of '93. And in looking ahead at the need to duplicate that kind of material for -- for wide distribution seems to me just impractical and overly erroneous given the value of information.

I think something like equivalent to the PIP that's available in a public place, if this historical information needs to be looked at, would be much more reasonable. Because I just can't

imagine reproducing volumes and volumes and just distributing it that widely. So it's just kind of a practical concern.

MR. McKITRICK: So if there's existing information in the record or something, should it be referenced as opposed to put into the PAD or?

MR. GEARY: Well, made available to the public. But just not -- I can't imagine duplicating previous applications that were five, six, seven volumes and having to distribute them to 40 or 50 people. In doing a couple of drafts of that, just I don't see the value of information.

MR. McKITRICK: Okay.

MR. GEARY: Most of it's historical.

MR. McKITRICK: Okay.

MR. CLEMENTS: Ron, were we going to get topics and then prioritize them?

MR. McKITRICK: This is all within the same topic. It's PAD. And we're just getting associated with that. We haven't moved off of PAD yet.

MS. MOLLOY: Is small projects just PAD or just overall?

MR. McKITRICK: I thought it was dealing with -- the way it was brought it up was I think associated with the PAD. But it may be a separate --

and am I missing something? John, you're looking at me quizzically.

MR. CLEMENTS: It just sort of sounds to me people were getting sort of positional I think, if you will. And in all the others we came up with a list of topics, and we had a vote on which ones people wanted to talk about. And then we prioritized them that way.

It seems we just sort of jumped into the content of the merit of PAD and without hearing about other topics other people want to talk about.

MR. McKITRICK: I guess I'm still -- I thought these were specific topics -- I mean specific things within the PAD. But if I'm -- rather and trying to define --

MR. CLEMENTS: Well --

MR. McKITRICK: -- that --

MR. CLEMENTS: It's their meeting, so I guess we'll let them do it their way.

MR. PUZEN: Shawn Puzen, Wisconsin Public Service. I have a nonpad question.

MR. McKITRICK: Okay. A new topic.

MR. PUZEN: Basically I guess I want to know a little bit more about the information associated with a request to use the nonintegrated

process, use one of -- the alternate process or the traditional process, what kind criteria are going to be used to evaluate whether or not we can go with one of the other processes? And especially relating to one of the other questions you posed, how can we make this to accommodate smaller projects better? And I think that maybe one way to -- to try and do that through making it clearer as to whether or not the traditional process could be -- would be used.

MR. McKITRICK: Okay. So dealing with the -- looking at the selection criteria for the three processes or the other two processes.

MR. PUZEN: Yes.

MR. McKITRICK: Yeah.

MR. MARTINI: Bob Martini from DNR. I had a similar question. Who makes the decision on those three processes? Could, for instance, the state recommend, you know, the integrated process? If the applicant wanted to go the traditional process, is there a mechanism for discussing what's most appropriate for that site? And who actually makes the decision?

MR. McKITRICK: Okay.

MR. MARTINI: And how is that decision made? I mean is it based on what the applicant

wants? Or is there some other set of decision items that would be taken into account?

MR. McKITRICK: Okay. Who makes the decision on the process.

The name and --

MR. NEUSTIFTER: Okay. Bob Neustifter, Consumers Energy Company. You know, the topic I was going to bring up was also the choice among the processes and the criterion. And I guess I got another subissue is what happens if an applicant requests one process and is turned down on that process? Where does he go from there and if in the time lines to get going on the process?

MR. McKITRICK: I understand.

MS. TORNES: Angie Tornes from the National Park Service. I'd like to talk about the discussion on whether or not a draft application still makes sense.

MR. McKITRICK: Okay.

MR. SCOTT: This is Mike Scott from DNR. Perhaps this issue is -- we're beyond this issue, but my -- the thing that pops into my head with respect to this proposed rule making is actually the need to have three different processes -- the traditional, the integrated and the alternative. I know that a

couple of years ago when FERC only had one process, the alternative process was -- as shortening time and there were shortcuts that could be used. And instead of taking five or seven years, it could take three or five years to do the licensing. So the -- I don't know if this is right or appropriate for discussion or not. But the thing that sticks in my mind is do we need -- really need to have three processes? Or can you have just one process but have shortcuts built within the one process that would shorten up the process depending on the type of license?

MR. McKITRICK: Okay. Good.

MS. VOLLBRECHT: Mary Ellen Vollbrecht, Wisconsin DNR. I'd like to revisit the issue of a dispute resolution process for study results as well as the study plan. And that's -- I think that's the issue that Bob raised this morning.

MR. EVERHART: Lloyd Everhart with Xcel Energy. I would like to -- some clarification on the expanded rule of the public participation and a little discussion on that. I didn't catch the last comment. But if she didn't say anything about dispute resolution process -- that is up there.

Okay.

MR. McKITRICK: Yeah.

MR. PUZEN: This is Shawn Puzen from Wisconsin Public Service. Earlier I had brought up a comment about a meeting with the dispute resolution committee. Is that something that we can again discuss later?

MR. McKITRICK: Okay.

MR. EVERHART: Somebody else has got a microphone, but the time frames in there for the different steps.

MR. CLEMENTS: Name please?

MR. EVERHART: Lloyd Everhart again with Xcel Energy. Some discussion of the time frames. It seems like the steps in there are too short as far as the 30-, 45-day time frames. And following through with the -- I guess you call it the draft license application.

MR. McKITRICK: Okay.

MR. MARTINI: Bob Martini at DNR.

MR. McKITRICK: Well, it's off.

MR. MARTINI: Bob Martini. Hello?

MR. McKITRICK: There you go.

MR. MARTINI: Okay. Now I forgot what I was going to say. (laughing)

No. I think the idea is that on the time deadlines, we all know that we're subject to all

these time deadlines. If we miss by one day, we're out of the process. In other words, at the end, FERC can take two, three, four, six years, however many years it takes to get the license out.

In the meantime, we have all these annual licenses. And in some cases it has adverse effects on the -- the biological system. And I can give some examples. But I would like to find out how you expect to keep to that schedule and get the license out in a timely fashion after everything is in?

In some cases we've had settlement documents where everybody agreed on all the issues and it still takes several years. So what I'd like to do is get some mechanism for making sure that there is a protection for the resource while the license is being drafted by FERC and to keep that process as short as possible after everything is filed.

MR. McKITRICK: So schedules applying to FERC as well as all the stakeholders.

MR. MARTINI: Right. Right.

MR. EVERHART: Lloyd Everhart again. I was thinking about the content of the study, scopes study plans, the detail that's expected for the licensee to

provide. If a great deal of detail is to be provided, the time frame is far too short.

MR. McKITRICK: Okay. So again time frames and specifically related to the study plan detail. Got a good list. Okay.

MR. GEARY: Maybe a couple more. Dennis Geary, Normandeau Associates. I'd like to at least consider the study criteria and the study itself criteria, adequacy of those. And perhaps if we have time and others are interested, integration of endangered species, at Section 7, consultation in the process.

MR. McKITRICK: Okay. Good. Okay. Anything else? Bob?

MR. MARTINI: Bob Martini at DNR. Is there any change in the way Section 18 would be implemented into the process? Or would that be after you're all finished? Or is the rule to actually changing Section 18 at all --

MR. CLEMENTS: Okay. I can answer that one right now. No.

MR. McKITRICK: Right.

MR. MARTINI: Okay. Good.

MR. McKITRICK: I think what I'd like to do is actually just see a show of hands. If we go

through the list, if this is important to you, raise your hands. We'll count them, put it up there. And that will be how we prioritize these.

So the first one with all the different aspects dealing with the preliminary application document, a discussion of that, see a show of hands? (Hands raised). 14?

Process choice criteria. This is the three different processes, who decides. That's important. (Hands raised) 9.

Is -- there was this dealing with is there a need for the draft application? And you got your vote. (hands raised) I got one. Oh, two. Two. Yeah?

Is there a need for three processes or can we deal with one to change it. (hands raised) Three, four.

Dispute resolution, is this one dealing with the results of the studies? (Hands raised.) 9.

Public participation, more discussion about what we mean by that or what is that? (hands raised) Eight.

Oh, licensee's role in dispute resolution process. (Hands raised) Five, six.

MR. MARTINI: Could you explain what difference it makes whether you get two votes or 14?

MR. McKITRICK: I'm not -- this is how we're going to order things. One with 14 votes, we go first. One with one vote probably is going to be at the end of the discussion.

MS. MOLLOY: General time frames have been out --

MR. McKITRICK: General time frames have been particularly outlined, particularly in that first year, can we meet those, are they long enough, short enough, whatever. (Hands raised) Nine.

There's a contingent of nine here. Time frames for FERC action. How are we going to do this? (Hands raised) Seven.

Study plan detail, how much detail is needed in the study plans and meeting the time frames associated with that? (Hands raised) Six.

Discussion of the study criteria that we talked about? (Hands raised) Three?

And integration of ESA into the integrated licensing process. (Hands raised) Two. Okay. Good. So obviously the PAD has 14. We got a number of them with nine. We'll move through those. It's 11 o'clock. I'd suggest that maybe we get

started with this discussion now and then, you know, if we don't finish the PAD discussion by 12 o'clock, we can pick it up in the afternoon or just move through them and then take our break or take our lunch. Is that okay with everyone as opposed to breaking an hour early? Angie?

MS. TORNES: For what it's worth, it might be of use to know that if you get to the restaurants in the vicinity before noon, you have a better chance of getting through faster. So if we're at a convenient breaking point at 11:45, that might be an advantage to getting back here at 12:45 rather than going from 12 to 1:30.

MR. MCKITRICK: I understand. That's a good idea. So we'll start looking at about quarter till. That doesn't mean if we haven't finished it, we can't come back. It's probably more important to get there rather than just be delayed in getting lunch. I think what we'd like to do, those folks that brought up the issue dealing with different aspects of the PAD discussion, if you have something up there, bring that forward to us. That may initiate the discussion, the clarification that's needed. And we'll just move through these that way.

MS. MOLLOY: I took it off while I moved

them around but it was PAD was the first one. So --

MR. McKITRICK: We'll start over. What's the first -- no. Did you save it?

MS. MOLLOY: Yes. Oh, it's right here. I'm just moving it around. And rather than have you all flip around with me, I'll just flip quietly. But it's the preapplication document, one size fits all, duplication of prior documents versus kept in public place and small project requirements. So it's generally the PAD in general I think there seems to be a lot of interest in talking about.

MR. McKITRICK: Anybody want to start that? I can't -- sorry. I should remember who a number of you brought up that.

Again, just name and the issue?

MR. DeWAAL: Arie DeWaal with Mead & Hunt. I guess just a general issue is if you leave the requirements point blank of what you're looking for for PAD, it seems that there's -- there could be a fair amount of information here that may not be relevant. Keeping in mind Bob's comment in regards to certainly you want to dictate on a project-by-project basis.

But as a general blanket, to require that type of information seems excessive for a number

of projects that in my years of experience just indicate that it's a -- a -- a -- excessive to the point where you're generating information possibly and instead of funneling up to an application, be funneling down to an application from an informational standpoint.

MR. McKITRICK: Could we have any --

MR. CLEMENTS: Yeah. Let me tell you sort of thinking that went behind that. With -- what we basically did was we took, as I understand it, the existing 4.3 (b) initial consultation package stuff. And then we went to 16.17 for relicenses which is all that public information. And we lumped those together and put them into the PAD.

And it's all -- it's supposed to be existing information. It's not supposed to require you to go out and do like, you know, water quality studies or anything like that before you assemble your PAD. It's just what's there at the time. And, like I say, we just -- we took existing materials for the most part and just put them together.

If you think it's too much, then, yeah, feel free to tell us that. And try to be as specific as you can. I heard the other day someone say -- and I don't know exactly what's in all of

those sections. But one of the requirements was to file the original application for the original license. And even I'm sitting here and going what for? I, you know, I have a hard time thinking what relevance that might have now. I could see something like the original license order which is going to describe the project as it was licensed. But who cares what somebody proposed to file in 1928.

It doesn't seem to make any difference. So, yeah, look through it very closely. And if you're looking at stuff that just seems ridiculous, then tell us. The other thing was that I thought in a prior draft of this that we had language in that sense at 5.1 that spoke in terms of information commensurate with the, you know, the scope of the issue or something to that effect. And I don't see it here. I think that was our intent. And that's probably another, you know, comment that people could make is I think that's where I'll --

AUDIENCE PARTICIPANT: I guess just as a quick follow-up in regards to the PAP type information, that burden to be included in dissemination, I can be honest, wow, I've been in FERC licensing since 1980. And I've seen a lot of the transformations in regards to that process. A

lot of the projects I've been involved in there has never been a request to look at a PIP. And now to ask to have that information included in a general portion of another document I think really needs to be looked at.

MR. McKITRICK: Anything else needed with the PAD? Let Bob --

MR. MARTINI: I was just going to make the point that one of the purposes for this prefiling the document is for a public meeting. And in the past there hasn't been a very effective attempt to involve the public. If there is a better attempt to involve the public up front, then I would think that the order from the previous license or any intervening orders explaining what the company is now required to do under the current license would be important to add. And it would be important to make sure that you have a -- just a laymen's description of what FERC is. You know, what the process is, things like that.

And that could be a generic description that goes into every single document. You wouldn't have to reinvent the wheel every time. But most of the public doesn't understand even who FERC is much less what the process is. And in addition, they don't understand what the existing

requirements are for the -- under the current FERC license for the dam they've lived around all their life. So it's very useful I think to get that document in there and to make sure that the process is described in a laymen's approach, not an attorney's approach. So the average citizen can go to that first meeting or whatever beefed-up public participation is included in the new process and be prepared because most of the -- of the time those meetings are useless.

The average citizen doesn't go because they don't know what it's about. And if they do attend, I don't think they understand what FERC is much less what the licensing requires of that licensee.

MR. MCKITRICK: So you would certainly -- I mean you're reemphasizing the need for the past order and that type of thing. More importantly, a discussion in the PAD of the FERC process. Is that --

MR. DeWAAL: Yeah, a description of the process.

MR. CLEMENTS: We're going to have an implementation team. In fact, we've already formed an implementation team. And one of the things that

they're going to be developing is a guidance document for people who prepare the PAD. And that's going to be, of course, posted on the Web site like everything else is these days.

And what you're suggesting might be a very good thing to have in that guidance document. And the guidance document might say something, you know, at the beginning of your PAD please include this paragraph and in which we would explain, you know, the context of, you know, licensing and what it's all about and why we're here in some kind of laymen, friendly way that the license applicant doesn't have to reinvent the thing every time.

FERC can have something for them there that they can shove in that gives the document some context. So that sounds like a good idea, with some mild stones involved so the public has some idea where they are in the process and where they can most properly insert themselves in the future. Okay.

AUDIENCE PARTICIPANT: Because that PAD document is often the basis for the public meeting, the information that's handed out at the public meeting.

MR. CLEMENTS: Well, it will be here, that and a few other things, yeah.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy Company. I gather we haven't focused that much on the PAD. And so if I'm misstating things, stop me. But from what -- what's been said in the current, there's kind of two bodies of information. There's the initial consultation package which is distributed. And there's the public information. I forget the third one.

MR. CLEMENTS: The 16.D for existing projects.

MR. NEUSTIFTER: Yeah. But, anyway, if the proposal is to have both what used to be distributed generally and what was just kept in a room at the licensee's office and nobody ever asked for, if the idea is to combine both of those and have copies of everything sent to everybody, I agree strongly with the person's first comment on things. The historical information that we've kept as part of the public information package as resources people could request. And to relicensing 12 projects, Consumers has never gotten a request for any of that information. And some of it's bulky and voluminous.

And it, you know, to make copies of all of that and to provide it to all the people who get initial consultation package now currently would

be -- be a colossal waste of time, energy and resources. And probably a waste of a lot of storage space on part of people receiving it.

MR. CLEMENTS: It -- would it make sense to do something instead like require the PAD to explain what the existing license, you know, as of this time requires? You know, the terms and conditions, the operating requirements and those things and perhaps just, you know, reference prior orders? So that you've gotten a narrative that people can get onto instead of looking at a stack of licensing and amendments order that goes back 40 years that no one is going to read, as you say.

We're thinking there ought to be some -- the PAD ought to provide a means for people to jump in and quickly become reasonably well acquainted with how at least an existing project is already working and what is required of the licensee under that license. So that's what we're trying to get at. If there's a better way to skin that cat than what we've got in here, let us know.

AUDIENCE PARTICIPANT: Actually, I think the current process where there's kind of a manageable amount of general information about the project that's distributed to the initial

consultation package and then the larger body of --
of more archaic documents that are available on
request. I think that kind of two-tier structure,
you know, works pretty well.

MR. CLEMENTS: Okay. Then yeah. That
would be a good thing to get down in writing too.

AUDIENCE PARTICIPANT: Okay.

MR. McKITRICK: Just a question. I think
we have something in here about that. But would --
you're doing your projects, did you use web sites and
that type of thing to post information or is that
something that's --

AUDIENCE PARTICIPANT: No, we didn't.

MR. McKITRICK: Yeah.

AUDIENCE PARTICIPANT: Most of those were
in the class of '93, and we weren't at that point
then.

MR. McKITRICK: I understand.

MR. EVERHART: Lloyd Everhart with Xcel
Energy. I'd just like to point out that not only do
you have to file the PAD once, but it says that you
will file a revised copy of it within 45 days after
receiving comments. So we're being asked to
reproduce this huge document twice, not just once.
And I really question the wisdom of that and the need

for that. I can understand the scoping document study plan perhaps. But to this document, I don't think the people that drafted the requirements understand what they're asking for.

I mean consultant safety inspection reports going back to 1981, each one of those in itself can be two inches thick.

MR. CLEMENTS: I've heard that as well that the people were surprised to see dam safety information in there. And I expect we'll get comments from other people saying --

MR. EVERHART: Emergency action plans --

MR. CLEMENTS: -- that doesn't belong in there.

MR. EVERHART: -- construction reports, things like that. And also one other thing that struck me is we're being asked to provide hourly operational data for the past five years. That just seems like a waste of paper and time. You can describe your operations without going into that detail.

MR. CLEMENTS: Okay. And, again, one of the intents of this -- and I understand for your question -- but this will start the format maybe, something you will carry through this three, three

and a half year process, changing it into the application. I mean things may have to be taken out.

But it at least gives you a beginning of that.

MR. MARTINI: Bob Martini at DNR. I worked on probably 50 FERC license dams. And I don't think there's a single ICP in that process that's 20 some pages. Many of them are five or six pages. And I don't think there are very many of them that go beyond minimum and maximum water elevation and flow and general information. I think the public wouldn't even know there is such a thing as a recreation plan, a land plan, management plan, fish and wildlife plan, things like that are -- that are required in the license. Now, I think there's a big difference what we've got now in the CI ICP that we're seeing typically and dumping several thousand pages worth of data. You can summarize a lot of that information. It's in the existing license. And summarize the process in a pretty short document.

To hold part of the agreed -- they shouldn't be making that document two inches thick or even a half inch thick. But you should be able to summarize what's in the existing license and what the current process requires, including the various plans that are going to be required as a result of

licensing. I think the public really needs to see that.

MR. McKITRICK: The ICDs have been helpful to resource agencies at least.

AUDIENCE PARTICIPANT: No. I don't think they have been helpful. There isn't very much information in them. And for the average citizen I think they get the basic background information. But they don't understand even fully what a FERC license contains much less what the issues are.

MR. McKITRICK: So the PAD you see being more useful to the public than the resource agencies?

MR. MARTINI: If it contains information that describes what's in existing license and what the license process eventually will require, that like all these plans that have to be done as part of the license and what the issues might be in addition to the boilerplate information. I think you can do that in a small number of pages without creating a 200-page document.

MR. McKITRICK: Okay. Were there other aspects of -- I think we discussed -- anybody else want to flesh out any other aspects of the preliminary application document? Other clarifications or what we mean by that?

MR. MARTINI: Is there any requirement about how it should be distributed, where and how many copies and all that stuff?

MR. CLEMENTS: Let's go to that.

MR. NEUSTIFTER: It's on page D-50.

MR. MARTINI: It says distribute to the appropriate federal, state, and interstate resource agencies, Indian tribes, members of the public, likely to be interested in the proceeding.

MR. McKITRICK: Bob, you were reading?

AUDIENCE PARTICIPANT: Are those members that might be interested in the proceeding to be decided by the applicant or on the advice of other agencies or what?

MR. CLEMENTS: I think we're assuming a good faith effort. But the Commission staff and I think can be consulted as to who that might be. And if you're -- you know, you probably say if you're a Wisconsin licensee, you know, you're aware that Wisconsin River Alliance or is it the River Alliance of Wisconsin? Is there -- I mean we'd expect you to contact them. Local user groups for reservoirs and things. But it does, you know, it involves a certain amount of discretion.

MR. McKITRICK: Angie?

MS. TORNES: Angie Tornes of the National Park Service. I think it makes sense to add in there though local governments.

MR. McKITRICK: Where are you reading? It looks like you have --

MS. TORNES: 5.4, page D-55 .4 (a) under the preapplication document. Local governments among the people to be distributed the information. Okay. And maybe NGO as well as -- I mean that's what we're saying here so why not add that in?

MR. McKITRICK: It isn't saying just public.

MR. CLEMENTS: NGOs are within the public. That's how we use that.

MR. McKITRICK: Was there any other --

MR. CLEMENTS: We had some discussion inside about whether to use NGOs in the public. And the thought was we wanted to use public because it's a little more inclusive. There might be, you know, some other entity out there that has an interest that you don't want to exclude. It's -- this could be characterized not as an NGO, but we're open to suggestion. Bob?

MR. MARTINI: Why don't you just say what you just said then? Our intention is the applicant

will make a good faith effort as to whoever the interested parties are in the public in this area.

If they never heard anything from anyone as far as comments about their project, they would at least have to try to go out and find out who's interested in this project.

MR. CLEMENTS: There are going to be newspaper notices with this too. If you look at I think 5.3, there's newspaper notice there too. So the public will see these things as well if they're reading the newspaper.

MS. TORNES: Realistically, the general public, if they want to be involved, they don't always read those small public notices. So that would be a really inappropriate way to resort to getting public input. It would have to be an active solicitation upon the part of the applicant to go out and find out who the local parties are and to include them in the list.

MR. CLEMENTS: How would they do that? Can you give us a suggestion?

MS. TORNES: I think contacting the resource agencies for starters would be a good way. Because they generally know who the local groups are. There's often times water shed groups, river groups

that are very local and also statewide groups. And you wouldn't expect necessarily the hydroapplicant to know who those are. But that would be a good place to start is asking that resource agency staff.

MR. CLEMENTS: Would that be the kind of guidelines we put in a staff guidance document as to how to solicit or would it be as opposed to a regulatory? I'm really not sure. But the important thing at this moment is we've got the recommendation here on the record. And go back and think about what's the best thing to do.

MR. MCKITRICK: Okay. Happy with the discussion dealing with the preliminary application document. Why don't we tackle process choice criteria and who decides about the process or with -- process choice criteria and who decides. I can't remember who --

MS. VOLLBRECHT: I'm going to take it just back for one -- yeah -- just briefly. Because I'm not sure whether the text that's there captures one of the issues.

Mary Ellen Vollbrecht from Wisconsin DNR. We didn't have -- really have a discussion about -- much of a discussion one size fits all versus small projects versus river reaches. And I

would just say as a part of that discussion that not only project size but also river characteristics, if there's any sense of modifying this text to have sort of a sliding scale of requirements, that it be not just project size but river characteristic that is the determining factor.

MR. CLEMENTS: I'm sorry?

MR. McKITRICK: No. Go ahead.

MR. CLEMENTS: The small project things actually hasn't come up in the context of the PAD so much as sort of the overall process. And in the preamble there, there's a discussion of a proposal by EEI and NHA for their version of a -- what streamline process would be for small projects which was essentially a consultation waiver after some opportunity for public comment and the appropriateness of that. And the Commission rejected that suggestion for a variety of reasons. But so said, still we'd like to find some way to streamline the process, you know, for projects that -- the word small isn't used. But I think the context is really sort of are there things that are not controversial or that, you know, don't have significant impacts in the general view that we can get through more quickly and easily.

So we're looking for comments on that.

And maybe as just a subtext of that is, you know, what do you put in the PAD. Maybe there are -- you could have different PAD requirements for certain kinds of projects. And then, you know, of course we still have to go back to the debate of how do you do -- how do you know it was a small project that qualifies for this until you looked at the PAD.

So it can get circular. But I see where you're coming from.

MS. TORNES: Thank you for letting me go back to that.

MR. McKITRICK: This is good. We can go back any time. However then, moving on. Process choice criteria due to size.

MR. PUZEN: Shawn Puzen, Wisconsin Public Service. I think that was a combination of my comment and Bob Martini's comment regarding the -- let me look at my notes here.

Basically I was -- I was looking to see a little more clarification into what the decision of which process gets used, what that criteria is and how is that decision made and so forth.

MR. McKITRICK: So if you want to choose an

ALP or TLP as opposed to integrated, what are the criteria.

MR. PUZEN: Yeah. And how is that decision made? Because right now it basically indicates that the applicant makes the request, and FERC decides on it.

MR. McKITRICK: Right.

MR. PUZEN: And I guess I want to know what criteria FERC is going to use or FRC is going to use to decide that.

MR. CLEMENTS: Let me take a step back, and I'll answer what I remember to be Bob's question first which goes right into yours. Bob was asking sort of how do you get input on that. And that's in section 5.1 (f). There's a section on requesting to use the -- either the traditional or the ALP. For applicants that want to use an ALP, nothing really has changed. What we did was we took the existing requirements for applying to use an ALP out of 4.34 and worked them into here. It's got to be a consensus-based application, you know, consensus to try to use an ALP, an -- a consensus on a communications protocol and then the other elements of that.

That was simply imported right into

here. So if you want to do an ALP, you really got to get your ducks in line before you file the notice of intent in the PAD. So that when you file it, you've, you know, you're ready to go. You think you've got the support you need to get that approval.

If you want to try to use the traditional process, it's a much more truncated proposal in terms of time. And it's not consensus based. What you have to do is submit that request to use the TLP at the time you file, you know, with your NOI and your PAD. And you also have to -- in the distribution that you have to the agencies, the tribes and the NGOs, you have to include that request to use the TLP. And you have to also in that request tell them that they have to respond with their comments on the request to the Commission within 15 days. Which isn't a whole lot of time.

And simultaneously you also have to have a local newspaper notice as well. And that's all I believe in 5.1 (f). And presuming, you know, the comments timely come in in a very short period of time -- I think it's 30 days from the filing of the NOI -- the director of energy projects would render a decision on the request to use the TLP. As noted before, it's in 5.1 (f)(5). It's a good cause

standard.

We have -- a lot of people have said we want something more specific than that to bound the director's discretion. We want specific criteria for what kinds of projects would qualify for a traditional process. And/but I haven't actually heard any suggestions yet, any specific ones. I expect we'll get a lot of those in written comments. So we're not into this good cause language. We're looking forward to getting comments on that.

MR. McKITRICK: Angie?

MS. TORNES: Angie Tornes of the National Park Service. On page D-46 the last line for the 15 days from the filing date, often times people don't know about something being filed until many days later. And then that might not give enough time to respond to it. So I think that 15 days is probably unrealistic for pretty much anything.

MR. CLEMENTS: I'm sorry. I'm not 100 percent catching which time period you're saying is not --

MS. TORNES: For people to respond to the alternative process --

MR. McKITRICK: What page are you on, Angie?

MS. TORNES: Page D-46 4 (a).

MR. CLEMENTS: The alternative process doesn't change. That's not the 15 days. Maybe we need to clarify that somehow. That would only apply to people -- well, let me take a step back. The 15 days does apply to both. But the assumption is that when you file to use the ALP, the alternative process, it will come as no surprise because your application to use it will have to show that you've already consulted with all these interested entities and you have a consensus in favor of using the ALP. So there's no surprise there.

It's only when you're trying to use the traditional process that someone could be taken unawares.

MR. McKITRICK: And if the Commission denies the ALP OR TLP, the assumption is they'll be doing an integrated process.

MR. CLEMENTS: Yeah. And that's one of the reasons that all these processes assume the existence of a PAD. Because you can't -- if you wanted to use traditional process and you were turned down, you've already filed your notice of intent. It's kind of too late to go back and start all over with a, you know, a 16.7 D stuff or initial consultation package.

You've got to have something there that you can keep working off of.

MR. MARTINI: So it would be assumed that the applicant is using the integrated process unless they make an application to the Commission asking for the traditional or the alternative?

MR. CLEMENTS: That's correct, Bob.

MR. MARTINI: And how much time do they have after the notice of intent is filed to make that application?

MR. CLEMENTS: They have to -- if they want to use the ALP or the TLP, they have to apply to do it with the NOI.

MR. MARTINI: With the NOI?

MR. CLEMENTS: Yeah.

MR. MARTINI: And then the agency or some other interested citizen has 15 days to comment on that on whether or not the Commission should grant that application.

MR. CLEMENTS: Right. Which we recognize is a pretty short fuse.

MR. MARTINI: And that's 15 days from the day you send it, not the day they get it?

MR. CLEMENTS: Not we send it. It -- from the distribution date, it's from the NOI date. So if

as a practical matter, for some reason you didn't get your copy until after the NOI date, that I see proposes a problem.

MR. MARTINI: Well, that has routinely -- that's a very common occurrence. And even with the 30-day situation, I often see maybe 20 days gone by the time -- the 30 days by the time I receive the announcement.

MR. CLEMENTS: Okay.

MR. MARTINI: By the time of the 30-day period.

MR. CLEMENTS: The language we've got here was intended to prevent that by stating that the applicant shall serve a copy of the request at the same time. And the service requirement assumes that it would be served on you no later than the day the NOI is filed. So that that should not happen under the language we think we've got here. But --

MR. MARTINI: Well, if you have a 15-day, maybe you can require it be E-filed so everybody gets it at once. That way there's more time.

MR. McKITRICK: Your problem is the mailing time or what?

MR. MARTINI: Not finding out about it in a timely fashion. By the time we find out about it,

it's often, you know, too late.

MS. MOLLOY: I mean that's a good comment and we'll --

MR. McKITRICK: And realize that we understand there's tight schedules and there's a lot happening in a short period of time. As you review this, if you've got comments of how we can do these things and have time and still get study plans in place, we're looking for good ways to do this.

MR. SCOTT: Mike Scott from the DNR. Just to add a couple of comments to Bob Martini's, you know, he talked about E-filing and what not. And I have to concur with him as far as the -- often times FERC issues -- the issue date is say April 1st. But the -- but the document isn't even mailed until April 9th. And then we don't receive it until April 15th. I mean those are actually realistic numbers. So we have half the 30-day time frame.

I would suggest that instead of 15 days, and especially since this is an extremely important step in the process because this is the only opportunity that the public and agencies have to comment and try to put some input into whether or not one of these three processes is used. And perhaps based on that determines on what happens years down

the road during the licensing process. So that 15 days is just too short of a time frame to, not only receive the notice, but also to get comments and get them back.

I would say a more realistic amount of time would be 45 days. That would give everyone ample opportunity to receive it, to digest it and to comment and get their comments back to FERC in time. Especially since, as was earlier said before our break, FERC is very strict on their -- on their deadlines. And if you put something in on Day 16 or Day 17, that's too bad, won't even be considered. So I think it's very important that ample time is given to the public and to the agencies to comment on this very important aspect of the licensing process.

MR. GEARY: Dennis Geary, Normandeau Associates. Notwithstanding the difficulties of meeting short deadlines but just from a practical point of view, maybe my biased perspective, but if the applicant has not gotten in contact with the state agencies, FERC coordinator, key NGOs, key members of the public to talk about which process they're going to use, they're going to have a lot more problems than somebody missing a deadline because they're just creating a situation that isn't

going to be very useful.

Whether it's required or not, nobody is going to be very successful in the process they pick if there isn't somewhat of a consensus ahead of time to do that. So if somebody thinks the strategy is to blind side people and sort of sneak in under the radar, that isn't going to work.

While this is a short deadline, I think in real life this isn't going to be an issue if people are doing the business at least the way I think they ought to do it.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy Company. Got a couple more things on the deadline. I mean I'm not saying 15 -- you know, I could see 15 days maybe being expanded some. But, you know, it's 15 days from the day something is filed it has to be served on these other parties. And service means it has to go out by the date it's filed. So I mean I can't say it doesn't happen, but I mean the requirements are that -- that it has to be sent out the same day as it's filed when you're talking service.

And kind of along the comments of the last person too, I mean it's our experience that the agencies we work with have a pretty good idea of

which projects are coming up for relicensing. And as you also said and, you know, I'm sure if we were going to try to use a different process other than the integrated process, I mean we would at least try to get a feel for how the other agencies involved are going to react to it.

So I think as a practical matter, at least agencies and NGOs that are normally, you know, players in the licensing process are going to know ahead of time that something is coming one way or the other. And it's not like they're going to get something in the mail and say, oh, gee, this project is going to be relicensed.

MR. CLEMENTS: That's also, frankly, my working assumption. That -- but the Commission was unwilling to impose any action requirements on the applicants prior to the NOI date. An applicant that wants to do something prior to the NOI date is certainly freely welcome to do so. But the Commission was not willing to mandate that.

Notwithstanding that, there are, as you indicated, there's probably some fine-tuning to be done here on the language regardless of what actual number of days goes in there to make sure that people get things when they're supposed to.

MS. MOLLOY: One question the Commission had, in addition, was what criteria or should there be criteria in making this choice? You know, right now we have good cause. And but we didn't identify particulars because we figure it was a case-by-case, kind of certain case -- certain projects would lend themselves better to certain processes. But it depended on the individual proceeding and sort of a lineup of factors. But we did ask, you know, were there criteria that we should look at.

MR. McKITRICK: Did you want to follow up?

MR. NEUSTIFTER: Yeah. One thing on what John had said. On the slide show -- slide show -- in the slide presentation there's an item about FERC notifying licensees in advance of the NOI deadline. Roughly when would that happen?

MR. CLEMENTS: We didn't specify a time. We're still kind of thinking about, you know, how early is too early, how late is too late. It's just it's more in the form of a kind of a wake-up call and to point you to the guidance documents we're going to have on the Web site. And we don't actually expect a licensee to forget that it's got a relicensing coming up. Although that did happen once.

MR. NEUSTIFTER: Well, I was just going to

say depending on when that would happen, I mean if the Commission is reluctant to require the licensee to do something before the notice of intent date, which is very understandable, it's possible that FERC is going to notify a licensee in advance of the NOI deadline, they could do it in a way in which, you know, agencies get copied in it on the record so they know it's coming too.

MR. CLEMENTS: I think that's the intent is that it wouldn't come as a surprise to anyone.

MR. NEUSTIFTER: So I mean that would help really with this process of commenting on what process is going to be used.

MR. McKITRICK: I got Bob, and then Doug.

MR. MARTINI: Bob Martini at DNR. I don't think it's an issue of whether or not the agencies know the licensing is coming. I mean that's pretty well known I think by most people that are working on this.

The key function there then in that notification is which process do you choose? From my point of view having gone through it a number of times, to me, I would try to get the integrated process as often as I could. It couldn't be as bad as the process that we've got now.

Right now what we have is -- when disputes are out there, studies, we really don't have any involvement by FERC. We have a difference of opinion between the applicant and the agencies. That is then sent in in the form of comments to FERC. And that's the last we hear about it. And then the agency does the study that they wanted to do in the first place.

So at least with the -- with the integrated process, you're going to sit down with FERC staff and you're going to have a built-in dispute resolution process. If every company comes in and says they want to use the traditional process, we want to intervene on that every time --

MR. CLEMENTS: By the way --

MR. MARTINI: -- to get away from that.

MR. CLEMENTS: -- the traditional process, if you dig into this thing, is not exactly the traditional process the way it was. It's got two really -- actually sort of three fundamental changes in it. And one is that there's full public participation. Under the existing traditional process regs there's only that one public meeting. And that's the only time the applicant has to talk to the public before the application's filed. The rest

of it is just agencies and tribes. That would be different.

The public would be there right at the beginning. And the second important thing is there would be a mandatory dispute resolution worked into it. Such that if the applicant was requested to do a study and didn't agree to do it, then it would be incumbent on the agency or the tribe or the NGO to request dispute resolution with respect to that issue. And that would be decided.

It wouldn't be a discretionary thing. It would result in an order from the office director to either, you know, do or not do the study. And if you didn't take the opportunity during pre-filing consultation to raise the dispute, you would be barred after the application's filed from requesting the study again.

So you really need to look into that. And the outcome of those two things is that under the revised traditional process, there is no provision for post filing requests for additional studies. Because the assumption is, you know, if you've got a problem with the applicant study proposals, you will have raised it, the dispute will have been settled, end of discussion.

MR. MARTINI: Maybe you should call it --

MR. CLEMENTS: Finally, the other clause to that is that dispute resolution process, though, is essentially the one that's in there now. So it doesn't -- it's not the two-tiered thing. It doesn't have -- at least it, as proposed, it doesn't have the study criteria. It's just the director's discretion as to what information the director thinks is necessary for the record.

MR. MARTINI: You should call it the revised traditional process then.

MR. CLEMENTS: Yeah. But it gets -- you know how complex it gets.

MR. McKITRICK: I -- we got --

MR. COX: Doug Cox, Menominee Tribe. And I don't want to take up too much time on tribal specific things since we do have a day tomorrow to discuss these. And I want to give everybody here their opportunities. I do agree with Bob's last comment on the general approach with traditional licensing. And I think we should call it the revised traditional licensing process.

MR. CLEMENTS: Enhanced.

MR. COX: Enhanced.

MR. MARTINI: Depends on how it works

whether it's enhanced.

MR. COX: Some things on time lines though.

Generally tribal specific, we have concerns about time lines and particularly the one we just talked about, 15-day time line. As far as tribal staffs go, I can only speak for Menominee. But in general, I know of many tribes at least in Wisconsin that are very understaffed. Even with longer time periods, it's very difficult for tribal staff to get things -- get comments and get them turned back to the Commission on short time frames. So that's really something of concern.

Notices to public really need to be specific at the front end. And get those notices to tribes similar to NGOs. We at many times historically have been left out or grouped in with general public. And that has created stresses on time frames.

MR. McKITRICK: Liz, do you want to discuss that tomorrow or?

MS. MOLLOY: No. It's a good comment. And, now, we do want to let you know it's quarter of 12. And we understand --

MR. COX: Thank you.

MS. MOLLOY: And we understand that we

should be getting out there to the restaurants before the big crowds.

MR. McKITRICK: So you want to address that later when we come back?

MS. MOLLOY: Well, we haven't really got the time lines or time frames. But I think we're still --

MR. CLEMENTS: Are we still in the process choice?

MS. MOLLOY: We're still in process choice. But we're looking at quarter of 12. Should we break for lunch now and come back at quarter of one?

MR. NEUSTIFTER: As long as we can still finish up with processes.

MR. McKITRICK: Sure, absolutely. Absolutely.

MS. MOLLOY: That's fine. See, I haven't touched the computer.

MR. McKITRICK: One o'clock? Does anybody know of good places around here? Do you want to come back at quarter till?

(Off-the-record discussion had.)

(Lunch recess had.)

MR. McKITRICK: Okay. We broke for lunch. And hopefully everybody found what they were looking

for and are happy with the results.

We left talking about process choice criteria. And besides I think there was maybe some indication that we would still like to talk about that a little bit more.

So before we leave the topic, additional questions, concerns, issues that you would like to bring up with process choice and size, process choice criteria and who decides. Bob, did you have anything else with --

MR. NEUSTIFTER: I guess the point that --

MR. McKITRICK: Just let's do your name and --

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. I guess one question that we started on but didn't quite get to was criteria from which types of projects. It would be the different processes it would work for. And I don't know if there's any sense that you have either from the previous meetings or, you know, from working on the NOPR as to, you know, what types of projects might work better for --

MR. CLEMENTS: Well, comments we got the first time around were some people said small projects. And then of course the response from resource agencies was, well, the size of the projects

has nothing to do with whether or not it's having any major environmental projects. That's only a coincidental thing. So that's no good. And then there was a suggestion that maybe projects where there had been some kind of NEPA document already done in respect within the past, I don't know, say last seven years wouldn't have to do it under a NEPA document. And that was not well received by resource agencies either or the Commission.

And so it really was kind of left with no specific criteria, just the idea that there's this class of small or noncontroversial projects that ought to have a way to get through this thing more easily. So any -- any criteria that people can offer for that or for process choice, we're really looking for.

MR. NEUSTIFTER: Bob Neustifter from Consumers Energy again. One possible criteria along with the small or noncontroversial might be a project with very little project land around it to be managed as opposed to one that has a lot of land in the project or a lot of land owned by the licensee already. I don't know if anyone here has any reaction to that as being a possible criteria.

MR. MARTINI: Well, that wouldn't have

anything to do with the flow.

MR. McKITRICK: Yeah. I'm sorry, Bob. We got external --

MR. MARTINI: Bob Martini at DNR. That wouldn't have anything to do with hydraulic issues or the aquatics issues or any of the others. You might artificially have less emphasis on a project that doesn't have very much land when in fact there could be a very contentious water issue or hydraulic issues. I think it's pretty hard to predict which ones are going to be noncontroversial until you get into the process.

Even then, it's sometimes not always foolproof because we often see these issues arising at the end of the process when people finally figure out what it means. And they say, you know, they have no idea what the process was before that. But they often come in right at the end and say, gee, we're totally against this. How do we get into the process. Well, you're a little late. That often happens.

MR. CLEMENTS: Under the scenario they'll be way late and they'll be too late.

MR. PUZEN: This is Shawn Puzen, Wisconsin Public Service. So basically since I'm kind of the

one that started this criteria question and there is no criteria at this time and it's kind of based upon a noncontroversial small hydro project, is that the criteria?

MR. CLEMENTS: From the TLP the only criteria is good cause. Like I say, there's widespread kind of -- maybe not widespread, but substantial dissatisfaction with that. And we're waiting to hear specific criteria from people attempting to make that process choice.

MR. PUZEN: Yeah. I guess basically the reason why I'm asking this is if we find -- I have no exact example right now. But if we find that we feel it would be a better opportunity for the traditional process, I'd like to be able to know what kind of types of things we need to present to the Commission to give a reason to use that. And I guess that's why I'm looking for a little more definition on there.

And obviously it doesn't appear like there is a definition.

MR. CLEMENTS: No, not in the -- not in the proposed rule. But we're hoping to get something better in the final.

MR. McKITRICK: You know, one of the things that you probably want to do is go out and talk to

the stakeholder groups. I mean and if they seem you can convince them, we don't get a whole lot of cards and letters coming back and you show justification, that might help. I don't know.

MS. MOLLOY: One thing you might do is think about why you, you know, you as a licensee would think it's a better process to use. I mean in evaluating that, you are -- you have reasons. And some of those reasons may be the same -- you know, would be what we would consider. But as yet, we haven't gotten down to sort of a criteria which is why we've been asking. Because, you know, a lot of minds can come up with some good ideas.

MR. STROM: Paul Strom, Wisconsin DNR. Part of this discussion relates also to one of the issues for later this afternoon, the need for three processes. It was suggested here earlier that whether we're too far down that road at this point or not, we don't know. But, you know, is there a need for three processes?

And we're going to talk about that later I guess. But it kind of relates to this whole issue of, well, if we don't know what the characteristics of the TLP are or the project that would lend itself more to that than something else,

maybe there isn't a need.

And just an observation, I know that it was suggested here as the topic for later this afternoon, got some interest up there obviously, I understand that it's been mentioned in some of your other sessions as well by both tribes and other states. So I mean that takes care of -- I mean if you only had the one process, obviously, be it a new integrated or even the case with the ALP which we had talked about a little bit earlier, it does away with that other issues of this 15-day notification period question mark that we debated earlier as well.

So just an observation that maybe in this effort to simplify things, make the whole overall process more efficient. By having three processes, you're adding another level of complexity. Yes, you've added maybe one more efficient process. But to have the whole thing efficient overall, you need to have fewer choices to reduce the complexity. Just a comment.

MR. CLEMENTS: Ron, do you suppose it makes sense to move that need for process up with this because they really do go together?

MR. McKITRICK: I have no problem really discussing that at all.

MR. CLEMENTS: We're going to get that before we get to other things any way.

MR. McKITRICK: That's fine. We kind of touched on a few other topics as we go anyway. That's typically the case when you get through the top three or four, you touch on some of these others in some aspects and start speeding up --

MR. CLEMENTS: If people want to add to --

MR. McKITRICK: -- one process versus three. Shawn, did you have --

MR. PUZEN: This is Shawn Puzen, WPS. I guess that was going to be my first question. Did you want me to wait to address that comment or should I --

MR. McKITRICK: No. Go ahead.

MR. PUZEN: I guess basically my feeling on the need for the three processes is even if we don't have the criteria and we can't come up with an example, if it's any one of the three, that doesn't mean that we should dispose of them.

Because that provides us somewhat the flexibility that we anticipate we're going to need. Even though we may not have specific examples to fit that. So I guess that's my comment on that.

MR. SCOTT: This is Mike Scott from the

DNR. A couple comments. First of all, with the criteria and who should decide it, it's interesting to note that the -- I mean I, in my head, have a dozen different -- laundry list for a dozen different items of criteria that may be applicable or appropriate to decide which type of a process could be used all the way from the amount of electricity generated or the potential amount going to resource concerns, impact to the resources, impact to land resources, water resources, et cetera.

But be that as it may, the -- so it is interesting to note that the hydroelectric people haven't -- and maybe they will be bringing this out in written comments. But they haven't yet expressed what those criteria might be. And even off the top of their head, that they can't say, well, it should be based -- it should all base on the ability or how much electricity a facility can generate that should be the criteria. But things like that haven't been suggested.

And while we're talking about the need for the three process, since that's been brought up, I would like to make some comments on that. I kind of compare the licensing process -- although it's not a good comparison -- to some of the processes that we

have at the Department of Natural Resources for permitting. And in particular, permitting air program sources where they -- someone is building a big power plant, for example, and they need to get a permit.

There is one permitting process, and that's the same permitting process that everyone follows whether it is someone who gets a big hydro or a electric generating plant or someone who's building a small printing plant. There's opportunity for expedited permits where the permitting process can go faster. But they also have to go through the same process.

The reason here that I understand for three processes and the third process is to shorten the time frame and to some extent shorten the effort from the licensing process to make it a little bit easier. But the concern I think which has already been expressed in having three different processes is with different requirements and time lines, it actually adds to the complexity of the overall licensing process. Especially -- and it's especially complex for citizens and public interest groups and state agencies.

We have to remember which process

pertains to, what procedures pertain to what process. And citizenry, you know, we'd like to get involved in this process. I'm sorry. This is the traditional process. You should have gotten involved a year ago. It's too late now.

Well, the last hydrofacility we got involved in right now. Well, yeah. But that was an integrated process so you were allowed to get involved then. But since this is tradition now, you can't get involved, that type of thing.

Even choosing the process adds complexity to it. As we've just discovered, no one can even come up with criteria. The second thing is, is that if a licensee chooses or FERC chooses for them to follow one of the three processes, then the benefits and requirements of some of the processes are lost. So instead -- and I can't -- I can't specify which those all are because I'm not as intimately familiar with the three different processes as some other people.

But instead of FERC requirement could -- what we should have is one process but there is steps within that process that can be shortened. Perhaps the need for certain studies or certain documentation and that could be shortened or left

out. Then the whole process can be shortened up. But to try to do that shortening expediting process by creating three processes actually adds to it instead of -- adds to the complexity of it instead of reducing the complexity.

Oh, I also wanted to add one thing while I'm thinking of it. We talked about this over lunch with respect -- Bob from Michigan had talked about the filing date being the same as the service date. And that the said date of service would be considered the date of filing. But that's not true. The date of filing is the date of filing up and down the date of service. And the concern with this is that -- and, again, we're thinking nationwide here. And you have a big state like California, someone might receive their notice on April 1st in Southern California and someone might receive it on April 3rd or 4th or 5th in Northern California.

The 15-day time frame though starts on the date of filing, not on the date of service. Otherwise you would have two different 15-day time frames depending on when the person received their mail. And that's not correct. So it should be -- it is the date of filing. And that date, that 15 days if we go with the three different processes should be

longer. So --

MR. McKITRICK: Okay. Anything else dealing with choice criteria and who decides? The need for three processes. Yeah. Bob?

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. This is just something sort of off the top of my head as far as the criteria go. But maybe rather than trying to come up with a lot of real specific criteria, maybe sort of one general criteria, criterion, in which you could bring up whichever of the specifics happen to apply. And that one may be being looking at -- I think the notion behind the integrated process or at least one of the notions kind of behind it is to try to kind of front load things so that you can get the license out by the time -- the new license out by the time the old license expires.

And maybe kind of as a general criteria, you could maybe use if there's reason to believe that we could go through the traditional process and still be able to get a license out, you know, within the five-year period or, you know, by the time the old license expires. And, you know, some of the reasons you might think that that might be possible might be it's a small project or it's not

controversial or it's this or it's that. But maybe that would make a little more sense having kind of a sort of general criteria in that.

I mean for whatever reason this project, such that we don't need to do all the front loading to have a reasonable shot of still getting the license out in time.

MR. McKITRICK: Okay.

MR. PUZEN: Shawn Puzen, Wisconsin Public Service. I guess I kind of agree with that. Because -- and, Bob Martini, you're familiar with this also. On our last application that we submitted was obviously through the traditional process. And we came to agreement on all of the issues including the conditions of the 401 prior to submitting the application. And I guess that's the kind of cooperation and expedited process that I'd like to see continue. And that's why I'm kind of so concerned about going to the new process.

MR. McKITRICK: Is there anything about that project that kind of comes to mind that made it work out or?

MR. PUZEN: Well, I think it has a lot to do with the personalities of the people involved with it too, to be quite honest. So, you know, I don't --

Bob, do you want to add to that at all?

MR. MARTINI: Well, I agree --

MR. McKITRICK: Name.

MR. MARTINI: Bob Martini from DNR. I agree that should be a goal. In fact, I think FERC should state that goal right up front, the goal of this new rule making process is to avoid trying to keep it to a minimum at -- and that any process that contributes to getting a license out by the time the expiration date occurs would be preferred. And so if you really do want to make this integrated process a fallback process, then you should state right up -- up front that it is a fallback process. And anyone that wants the traditional or the other one must show there will be benefits to the environment or there will be economic gains or some other gain that requires the traditional process or the alternative process to be used.

Failing that, everyone will use the integrated process. And the goal of the agencies, FERC specifically, would be to make sure that the license at issue by the expiration date so that we will no longer have to deal with annual licenses.

MR. McKITRICK: Okay.

MR. MARTINI: In think that is the policy

of FERC. Why not state it and say that this process is intended to remove that part of the delay that's been out here for years?

MR. CLEMENTS: That's definitely a goal here. Just to try to get them out before the other license expires, the other criteria whether or not you will be allowed to grant the --

MR. DeWAAL: Traditional because you're going to have more months in a traditional no matter how you do it. I think and in most cases there are very few licenses that I've been involved in that are issued by the expiration date under the traditional process.

And there are quite a few that are many years past the expiration date. And it brings up the issues that I was talking about earlier where you have agreement to implement things because you've been cooperating with a company. And the other agencies they say, well, what -- let's not wait until the license is finished. Let's implement now. And that can create some problems if you don't implement the whole package.

MR. McKITRICK: Okay.

MR. DeWAAL: One is, is that the traditional process as we know it now is a done

thing. It isn't going to happen. So to sit here and talk about how things were done in the traditional process in the past doesn't really justify what might occur in the future. I guess my analysis of what's going on with the traditional process is now in effect it becomes a hybrid process.

It asks the applicants and the resource agencies to cooperate more fully than it did under the old traditional process. And it makes sense to do so. To eliminate the possibility of dealing with a choice in process I think would be a big mistake. One of the things -- you know, I've heard a number of things from the resource agency standpoint. And I guess I'll play a little bit of devil's advocate, but I can tell you from an applicant standpoint on a number of projects that we've dealt with, the costs of those three processes are going to be dramatically different to the point where it could influence the viability of the project.

The ability for an applicant to deal with the resource agency in a cooperative manner I think is still there. And, you know, that's -- that shouldn't be an issue and hopefully it's not. But I think to eliminate that choice would be a big

mistake.

MR. CLEMENTS: Can you tell me why you think -- and this is what I think you're saying is that the integrated process would be generally more expensive than a traditional process? Is that -- or are you saying something different?

MR. DeWAAL: No. I think that it could very easily be more expensive from the standpoint of the amount of effort that's required. And more expensive, not necessarily just from an applicant standpoint. I'm talking about everybody standpoint. You know, the number of meetings that are required and the negotiations. Those sorts of things all take time, not only the actual time of conducting those meetings, but preparation and that sort of thing.

Although I think a lot of that depends again on the project and, you know, how many meetings do you need to decide what's needed for studies and that sort of thing.

MR. CLEMENTS: Yeah. I just tend to think of them as very case specific. And I try compare the integrated process to traditional. I'm thinking the costs on that basis alone shouldn't be different because they would just be spread out over a longer period of time.

AUDIENCE PARTICIPANT: And just based on that, you're looking on more costs any time you start. You can talk about it's spread out over a longer period of time. I think you increase costs.

MR. CLEMENTS: Yeah. But the interesting thing is comments from some, we should preserve the traditional process because it's going to be less expensive but we aren't getting a clear articulation why one would be more or less expensive than the other. I'm hoping to hear something in the paper on that to give us maybe some context. If you're looking at that, a resource type issues may not be to the degree that, you know, would warrant a lot of studies and that sort of thing. Just because of that your expenses are going to be down. I don't foresee a traditional process being an appropriate process where there are a lot of controversies or need to do any complexities or that sort of thing because in excess, the amount of effort to deal with those sorts of things I think would probably take it out of a traditional process as it existed in the past.

MR. MARTINI: But there again you sometimes don't know until you get into the process which of those issues are going to be very contentious and which require an additional amount of considerable

studies. It would seem to me the more identification decisions, the better off you're going to be in the end for total expenditure of time and effort and money.

MR. CLEMENTS: That's our working theory.

MR. MARTINI: So if the traditional process allows that to drag out further into the five-year time period, it would seem to me that it would be more cost effective in the long run to do the more expedited shorter process.

MR. DeWAAL: But it also seems to me that under the proposed traditional process as it exists now with the dispute resolution being a part of that you eliminate that.

MR. CLEMENTS: That could be. Okay.

Again, names when you speak, please.

MR. McKITRICK: Have we ground this into the ground? Or have we got some good -- does somebody have some additional comments before we go on? I would like to mention that transcripts at some point in time are being put on our web site. And I know there's at least one or two from previous meetings. You may want to go back and look at what's happened in other places if you think that may be helpful.

Generally time frames we talked in some aspects a couple of things. But I think this was broader in nature. I know Doug brought up something. I think maybe -- Bob's got the microphone. Name and --

MR. MARTINI: Bob Martini from DNR. Brought up the issue of whether or not FERC is going to be more timely in issuance of a licensing.

MS. MOLLOY: That's on the next column.

MR. MARTINI: Okay. This is not --

MS. MOLLOY: This is time frames for the licensee and some things in preparation.

MR. McKITRICK: The presentation of the application.

MR. MARTINI: Okay.

MS. MOLLOY: The FERC time frame is --

MR. McKITRICK: And actually we could probably spill over later. But let's address that first.

MR. EVERHART: Maybe I was the one that brought that up. I think I was looking through the NOPR and starting on Sections 5.9 and going forward, there are a number of very short time frames that are outlined. It looks like most of them are in the 30-day time frame. Starting with 5.9 within 30 days

following submittal of the revised preapplication document, the Commission will issue a scoping document one.

MR. CLEMENTS: Yeah. Look on the back of your yellow book. There's a schematic diagram. And that's got -- up in the upper left-hand corner of each box, it's got the days from the previous step.

MR. McKITRICK: And you're about at Step 7 here I think on the far right where you reference 5.9.

MR. CLEMENTS: And in the bottom right-hand corner of each box that's the step number in the process. And the bottom left is the applicable section of proposed regs so we can follow along where you're getting to.

MR. EVERHART: But my question: There's a series of those that are like 30 days each. And I notice that some of those are for FERC to act. And I just -- my years of experience in dealing with FERC, I know that it takes 14 days to get a piece of correspondence through FERC to staff. And it just seems to me that they're unwritten unrealistic days. I just don't think that they'll be met, not only by the licensee, but by the agencies. I just think it's unrealistic. I think it's something that should be

looked at real closely before these -- before this rule making is finalized.

MR. McKITRICK: Any -- I mean as obviously to say to look at it. But do you have any specifics? I mean realizing the amount of time to the NOI, to your filing date where it says drop dead date, there's a certain amount of things that have to take place. And what we try to do obviously is get things done early so we can get on with some work. Looking for some help here.

AUDIENCE PARTICIPANT: I understand that. And, you know, I think it should be as short as is reasonable. And then people are going to be able to meet the deadline. But probably anything less than 60 days is unrealistic I would think.

MR. CLEMENTS: Do you think it's conceivable that the development of the study plan could be completed within a year from the NOI? I mean forget the dates that are in here or the time periods. And just think of what that might entail. Do you think it's possible to do that within a year?

AUDIENCE PARTICIPANT: Oh, I think within a year I would think that that's very doable.

MR. CLEMENTS: The theory of this is when you go from Box 1 to Box 14 which is the end of study

dispute resolution, that's about a year. And one of the things we're doing is just taking out the time periods in there after, you know, the first couple. And then leave it to the participants to try to come up with a way to get through and develop a study plan and including any dispute resolution within a year. We restructured it that way.

AUDIENCE PARTICIPANT: Are your time frames added to a year?

MR. McKITRICK: Yeah.

AUDIENCE PARTICIPANT: They are.

MR. McKITRICK: They're real close, within just a few days.

AUDIENCE PARTICIPANT: I didn't realize that.

MR. McKITRICK: Yeah.

AUDIENCE PARTICIPANT: Maybe it's not realistic to get everything done --

MR. McKITRICK: But realize that's factoring in the dispute resolution process, the formal process which is 70 some odd days or something like that. So if there is no dispute with the mandatory conditioning agencies, then, you know, you're three months ahead of schedule.

MR. MARTINI: This is Bob Martini at DNR.

I wanted to ask if you're planning on getting any new staff. I know for sure we're not going to get any new staff. And I'm pretty sure that the utilities aren't going to get any new staff. I don't understand how this can move faster through FERC under the new process than it does now.

MR. McKITRICK: I know we're getting a new position for tribal liaison.

MR. MARTINI: Well, that will add time to the process, not save. If the theory is the liaison is out talking to more people, there's going to be more issues raised.

MR. CLEMENTS: Well, the big reason, the federal budgeting process being what they are, we just have to develop a proposal that we think makes some sense on paper and hope that, you know, we'll all have the resources we need to do the job when the job has to be done. We can't look beyond, you know, this year's budget, these things.

MR. GEARY: Dennis Geary, Normandeau Associates. And in talking about your time periods and lead times and complying with that, in my opinion, what the integrated process has done in terms of the requirements, they developed a preliminary application document and the study plan

document. And to some degree what incorporating the preliminary application document into the other two processes has done is extended the licensing period forward in a sense in that it's going to take more lead time. Well, you may say, okay, it's more likely to get everything done within the five years and get the license issued.

In my opinion, that is not going to happen unless people are starting minimum of a year and probably at least two years in advance of that. And in terms of generating the day you're going to need for that form application document getting a sense from the agency and what not what studies might be required, perhaps even initiating some of those. So while you are talking about that five-year, five-year six-month period as being more attainable, it's really adding time up front to make it work.

MR. SCOTT: I got a comment. Mike Scott from DNR. With regard to the short time frames, 30 days, 45, 15, et cetera, leading up to the one-year time frame in order to get your final order on -- let me see -- the --

MS. MOLLOY: Application.

MR. SCOTT: -- the application complete within a year, I think everyone has to keep in mind

why you have it segmented into 30-, 45-day time segments. And that is to have both the applicant and FERC and to some extent the citizens and state agencies and other federal agencies keep the process rolling along. So the comment that was made at the table that perhaps do away with all the 30- and 45- and 15-day time frames and just have a one-year time frame I think is an excellent suggestion with regard to the dispute resolution boxing up that one year time frame.

There could be a provision in the rule that says if there's no dispute resolution, things have to be done within a year. Or a target date should be within a year. If there is dispute resolution, then add 70 days or two months, three months, whatever the case may be.

In addition, the 30-day time frame suggestions, the time frames for each of the segments could be put into some type of guidance document that could be given -- that could be provided to everyone to say if you're going to be applying for relicensing, here is the suggested time frames for each of the different segments. Try to follow those as best you can. And then you'll get a year.

You should make it within a year. And

if you miss 30 days on one, you go up to 35 or 40, then you'll know that the next time we're suggesting it be 30 days, we'll have to do that one a little bit faster.

It was also suggested to me, as long as I have the microphone -- it's not my idea; it's Mel's idea, so I'm not going to take credit for it -- that there -- there are time frames 30, 45, 15, those be business days and not calendar days. And by having them be business days, you add perhaps 10 perhaps more days for each segment, which would make it an extra two weeks of work time which might be just enough --

MR. McKITRICK: Okay.

MR. SCOTT: -- to make it realistic.

MR. McKITRICK: Time frames? Okay. Good.

Okay. Dispute resolution process for results. This was kind of talking about maybe even an additional dispute resolution process. I think maybe, Bob, did you bring that up or if you wanted to lead that off? Just name and --

MR. MARTINI: Bob Martini DNR. Sorry.

MR. McKITRICK: We'll get you by the end of the day.

MR. MARTINI: I think there's just as great

as a potential in delay in the interpretation of the results as there is on whether or not the study was necessary in the first place and how it should be designed. I think it's useful to have that -- after one year have that essentially adapted management meeting that goes over what's been done in the past year, what the problems have been, what kinds of changes need to be made. Because you'll -- you'll go towards improving the interpretation if everybody actively participates in that adaptive management session.

But still at the end you're going to have significant differences between what the agencies want and what the licensee wants. And an issue like trained mortality, I can't imagine that you go through those studies without having a difference of opinion at the end. And it seemed to me that the same approach -- some kind of neutral panel that is very well versed in that issue could help resolve. It seems to me that that hasn't been done in the past. I don't think there really has been a very good discussion with FERC staff with the issue of trained mortality, for instance, in Wisconsin. And there are many others like that.

And I think that would be an

improvement if we could get a mechanism to make a decision without agreeing to disagree indefinitely which is what we do now until FERC makes the decision. And then we don't have any recourse.

MR. CLEMENTS: Yeah. When we were talking about dispute resolution and what it ought to be used for and the period during the conduct of the studies, there was -- we talked a lot about this with the other federal agencies. And the consensus was that you couldn't keep going to the panels all the time. Because the panels, each one has a 90-day thing on it. And if you kept going back to the panel and back to a panel and back to a panel, your process would really grind to a halt.

So what we came up with was what's in 5.13 (a) and probably (a), (b) and (c) where when you have that one-year meeting and then you have, you know, the discussion and people try to see if they can resolve differences, if there is no agreement or there is -- isn't an area of disagreement, then anybody can file that disagreement. And then there's a short time period for response.

And then there's -- in 15 days further the director makes a decision on the disagreement and you move forward. But it's not trying to get

together another panel again.

MR. MARTINI: But that's my point. The director makes the decision. We've seen a lot of those decisions. They're one liners. They don't get into the details of the issue. Some of these issues are very complicated. And, you know, the director will say we have taken into account all the information filed by the state and we find no reason to change or something like that. And they don't get to the 25 issues that are being discussed, subissues within that issue that was filed.

MR. CLEMENTS: Well, the presumption here is that there will be an articulation of the rationale and that these disputes will be I guess better handled than they have been in the past.

MR. MARTINI: Well, that would be great. I hope you're right about that. But I don't think that part of presumption is looking at past practice as well. And in looking at past practice, I don't presume that.

MR. McKITRICK: Just for the standpoint of just clarification on my -- under the traditional process there was a dispute resolution process. That was used since you -- probably 20 times, something, very few times. And the ones under that dispute

resolution, there was an analysis associated with that. I'm -- you could probably pull one up that was two sentences. But I'm familiar with a few that were pages.

On the other hand, there may have been conclusions within NEPA documents that may have been as short as you stated. I don't know. But, correct me if I'm wrong, that's our intent in this. Somebody got a mike?

MR. CLEMENTS: There's also criteria, if you look at 5.14 (b), that are appropriately applied to these kinds of things such as whether the study was conducted the way it should have been or whether there were anomalous and environmental conditions or material changes that is -- would, you know, affect the study. And those are things that ought to be addressed in resolving any of those disagreements to the extent, of course, you know, they're of course applicable to that one.

MR. McKITRICK: Bob?

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. And I'm not sure I understand the point of getting the dispute resolution on the study results. I guess in my way of thinking, you get the study results. And the licensee puts in a draft

application and says -- or final application, draft application initially, and says, you know, this is what we think came out of the test and the studies. And then the agencies, you know, and the licensee proposes what should be done in the license as a result.

And the agencies say, well, no, we don't think what's -- that's what the data shows. It should be this, this and this. And it gets sorted out in your licensing order as to the -- what the required provisions are in the license. I guess I'm not sure what the result would be of deciding it earlier. What the true results of the study were, you know, what would happen differently from then on rather than just having it come out in the licensing order as it -- as a provision in the license based on what the Commission decides the study data really meant.

MR. McKITRICK: And the question, Bob, just so I understand again, is that, that is your question as opposed to is a different study needed because of these results? And it's an interpretation. It's a dispute on the interpretation of those results?

MR. NEUSTIFTER: Interpretation of the results is the important --

MR. McKITRICK: I understand.

MR. NEUSTIFTER: And as I understand it, there is a mechanism to file a dispute on that right now in the current proposal.

MR. CLEMENTS: I guess I'm backtracking now too. Because when I -- when -- under the circumstances, a dispute over the interpretation of the results, it sounds like you're asking for some kind of final decision on what the results of, you know, what the study showed. And I was talking about, for instance, a situation where you -- the study plan said that an entrainment study was going to be conducted in a certain way.

And at the end of the first year there were variations to the actual conduct of the study. The applicant did or wanted to do based on, you know, conditions that came up that it wasn't aware of or expecting at the time. They wanted to do something different. And the DNR wanted to do what was in the original study plan. That would be the kind of dispute that would go into that as opposed to, well, you know, here's a -- here's a set of output data. What does it all mean?

It doesn't seem to me that's the kind of thing that's appropriate for a dispute resolution

at this stage. That's something that has -- that should be treated in the actual NEPA document at the end.

MR. McKITRICK: Dennis?

MR. GEARY: Dennis Geary, Normandeau Associates. I hate to admit this. I kind of agree with Bob at this point.

MR. MARTINI: You don't have to.

MR. GEARY: I'm just kidding around.

MR. MARTINI: I would agree with you.

MR. GEARY: Thanks a lot. That kind of situation you talk about where there's no disagreement about the disagreement of the validity of the study, it was done in the right conditions, the way they said it was supposed to be done but there's some question about the interpretation of the output. And maybe it's like Bob said.

Entrainment mortality, what does that mean? Or it's an inflow study where you're trying to recommend some operational change. And I can understand how it would be difficult to arbitrate at that point in time. And what I was thinking in some cases, if possible, is to go further forward in the process in terms of the study and study methodology when those kinds of outputs are anticipated and the

best you can in the methodology, identify how the outputs are going to be interpreted, the significance of certain numerical outputs, put that into the methodology and say if the instream flow value are -- instream flow study predicts this, this is what the -- the operational change or enhancement measure will be.

I know it isn't always possible. But maybe tightening up the methodology and -- is one way to reduce the opportunity for contention over study output.

MR. CLEMENTS: Okay. I guess the general theory was that disagreements over the specifics of the methodology ought to be resolved in the first instance during the preliminary determination. Or if it's a -- if it's one of those agencies or conditioning authority, possibly during a formal dispute resolution.

Our hope is that this process will force people to sit together and work together in a way that that will minimize the number of formal and informal dispute resolutions that people request. There is a certain -- you know, there's an uncertainty for everybody involved in those things. The only certainty that you get is that you're going

to get an answer. And we think that that alone will push people toward trying to resolve their differences rather than wait for the office director to make a decision.

MR. McKITRICK: I don't think there's anything -- and correct me if I'm wrong, John. But I mean it -- there may be a couple ways of looking at this. But I mean if the intent in somehow like in many ALP, is to reach settlement, often times there's things built in that may not be in regulation that allow parties to get together and develop ways to resolve things.

Maybe what you're talking about, interpretation results, I don't think there's anything that precludes people from doing that. And particularly if that's the goal of the licensee, then that's -- I don't think there's anything to keep us -- keep you from doing that within the last two years. I'm not sure. I don't think there's anything in regulation that we're proposing at this point for that. But --

MR. CLEMENTS: That's right.

MR. EVERHART: Lloyd Everhart with Xcel Energy. Before we leave the dispute resolution process, I just want to comment a little bit about

the content of the panel again.

MR. McKITRICK: Um-hmm?

MR. EVERHART: We talked about that earlier and haven't since we got into the discussion. But I don't know. I heard what you said about your rationale for including another agency representative. But I feel pretty strongly that if an agency representative is going to be on that panel, the licensee should have equal representation. I doubt if there's any other licensees here that don't feel the same way.

MR. CLEMENTS: You're probably right. And on the other side we've heard comments from some resource agencies or environment group people saying that we don't want consultants on that panel. Because they're too wedded to the industry for their bread and butter. But -- and but also heard I think sort of off the record at this point. We don't want academic because they'll always side with the resource agencies because they always want more studies. And somewhere we're just trying at this point to find some persons who don't have a clear conflict of interest, somebody that, you know, has the -- I guess the reputation for square dealing in addition to their technical expertise.

MR. EVERHART: I understand where you're coming from. But there's a perception there, my perception anyway, that if you got the agency there who has brought the dispute and he's going to be part of the decision or part of the recommendation that's going to the director, he's having weight in the process. And giving more weight where a licensee's arguments aren't be -- being heard.

MR. CLEMENTS: It wouldn't actually -- I want to make this clear: That that person wouldn't be the actual person or a person assigned to that case for the agency. It would be someone separate. For instance, if it was a -- a commissioned staff versus forest service dispute, it might be someone from the interior department as the neutral. Or, you know, if it was the interior department was involved in the dispute, it might be someone from forest service with appropriate expertise.

And then there's also a discussion about -- feel free to weigh on this -- whether there ought to be, for any dispute, a prohibition on another person from that agency regardless of where they are in the agency serving as the neutral for the very concerns that you've expressed.

MR. EVERHART: That would give me some

comfort.

MR. CLEMENTS: Yeah. So get these things in writing too. Of course I'm going to be going over this transcript, so anything you say here will be -- but it helps to get it all nailed down after you've got a chance to think and articulate a little better.

MR. PUZEN: This is Shawn from the Wisconsin Public Service. And I think I'm the one that started this dispute resolution process licensee role. And I agree with Lloyd that I'm a little concerned with being -- that it's brought by the agency first. And as a dispute, the agency involvement, even if it isn't the actual person bringing the dispute because quite often I think we've all experienced, as licensees, when you get comments from agencies, you have a tendency to get the same comments from sister agencies all the time that are actually the same comments.

So I don't know that being removed by a different agency is going to separate them significantly enough to make it nonbiased I guess is my concern on that. And I think I had originally started this by indicating that perhaps at the very least a meeting would be allowed with the applicant and the committee. The applicant could request a

meeting in person with the committee that's been chosen to decide upon this.

And I guess that was just one of my suggestions. So --

MR. McKITRICK: Does it help at all -- I mean if the -- I mean the direction to the panel is to weigh this against the study criteria. Not just -- I mean that's -- they're going to raise this disputed study and look at the criteria and say does it meet them or not. I mean that's -- I think that's the --

MR. PUZEN: I guess I'm -- which criteria are you --

MR. McKITRICK: The study criteria within the NOPR. I think there's a list of six or seven.

MR. CLEMENTS: Either 5.10 or 5.11. That's what the panel is supposed to address.

MR. PUZEN: I guess that would help to some degree. But I still do have a concern about the -- in all the attempts of FERC to try and make that a nonbiased committee. I think that's a difficult, if not daunting, if not impossible task to some degree. So and that's my concern.

MR. McKITRICK: I understand.

MR. CLEMENTS: And, again, if people just

think the entire panel idea should be abandoned and something else substituted, let us know.

MR. SCOTT: I just --

MR. McKITRICK: Name.

MR. SCOTT: Mike Scott from the DNR. Just so I have it clear in my head, under 5.13 (d) where it talks about if there's a dispute brought from say the Wisconsin DNR, that you'll have someone from -- you'll have someone from FERC who is not involved in the -- in this particular licensing process, you'll have someone from the DNR who is not involved in this particular licensing process, and then you'll have someone from the laundry list who is the third person. Is that the way that would work?

MR. McKITRICK: A dispute is being brought by the DNR for 401?

MR. SCOTT: Well, for what -- no. Not for 401, for studies under 5.13.

MR. CLEMENTS: We need to again clarify the two-step thing. This is when you're in 5.13. You're in the formal process. And that only applies to agencies that have a mandatory conditioning authority. So only the Wisconsin 401 agency would be able to --

MR. SCOTT: That would be you -- us --

MR. CLEMENTS: -- to do a dispute.

MR. SCOTT: That would be the DNR.

MR. CLEMENTS: To get to the preliminary determination. That whole process involves a resolution of dispute by means of, you know, the parties putting in their -- making their recommendations. And then the study plan is preliminarily approved by the director.

MR. SCOTT: Okay.

MR. CLEMENTS: That's the informal dispute resolution that applies to everybody that doesn't have the mandatory conditioning authority.

AUDIENCE PARTICIPANT: And in that informal dispute resolution process, is the procedure still the same if you have a FERC person, an agency person and the third person? No?

MR. CLEMENTS: There is no panel.

AUDIENCE PARTICIPANT: No panel at all? So we're just talking here on respect to the panel issue. Okay. I still think it's, you know, it -- I have to side with the industry folks on this one because I think from just from a due process standpoint, you can't resolve a dispute without -- that involves the applicant without having someone from the applicant there representing the applicant.

Now, there can be an argument that it shouldn't be an academic or it shouldn't be a consultant. That's fine. But someone should be representing the applicant.

MR. CLEMENTS: And since they're represented but they don't have a vote, if you will --

MR. MARTINI: They can be there in the process.

MR. CLEMENTS: I'm sorry?

MR. MARTINI: They can be there but not necessarily on the panel. I mean there's a lot of interest that might weigh in and provide information to the panel as I understand it.

MR. CLEMENTS: Yeah. I think that's correct.

MR. McKITRICK: There's opportunities. I mean it's -- I almost hesitate to bring this up, but it's not that the idea of those of who -- who participated in 10 (j) * where it's between the agency that has brought up the concern and FERC. There's certainly other people that can bring information to those people that are discussing that. The licensee being one. And this is proposed being the same way from the standpoint of the agencies and

FERC as well as an independent help with this -- with the licensee being able to present information that would help us look at those study criteria as a panel and make a decision. So they're there just not on the panel.

MR. MARTINI: This is Bob Martini from DNR. I would caution against disqualifying whole groups of people from serving on that panel. I think if you try to make the panel equitable, you may end up with people that don't know anything about Wisconsin rivers. A lot of the people who work on Wisconsin rivers are -- are either utility people, consultants or DNR.

And if you then say that any one of those three groups is not suitable for participation, you could end up with some academic from Arizona trying to understand Walleyes in Chippewa River or something. You know, you need to have some expertise there also. And a lot of that expertise resides in those groups that you're thinking now might not be equitable to represent on the panel.

I'd rather see a larger panel, maybe five instead of three, and have expertise in that area than people who don't have any experience in Wisconsin resources.

MR. CLEMENTS: Yeah. There is a strong desire here to get people with the appropriate technical expertise. We think that's important too.

MR. McKITRICK: Angie? Name.

MS. TORNES: Angie Tornos with the National Park Service. It says that a person from the agency could be part of the panel but they just couldn't be involved in the process in that project. So I think that that --

MR. CLEMENTS: That's what it says now.

MS. TORNES: Okay. Also I'm trying to refresh my mind as to the -- what would happen for agencies that don't have conditioning authority on study recommendations and resolving the decisions on what states are actually done. And I found it humorous that in the NOPR it said that these entities beared no responsibility to make a reason to recommendations. And I think we do try to do that all the time. But, nevertheless, the question still remains and how do you decide on those studies that are recommended?

MR. CLEMENTS: Those are committee decided I guess basically through box -- Box 11 in the preliminary decision. And that would be based on the record that's developed as you're going through this

entire consultation process and all these previous boxes with the draft study plan and the comments and all of that and the revised draft and the scoping document. And then there's the study plan meeting and Box 9. And so there's a series of steps that develop the proposed study plan. And then you finally get the director's decision on the study plan. And that takes -- that resolves any underlying disputes for the agencies that don't have mandatory conditioning authority.

MR. McKITRICK: And the licensee will be working through these boxes. And at Box 6 is where you actually see the draft study plan depending upon how you want to start this. It either starts at 1 or 6. But I mean that's where they've worked through 1 through 5 to get the information to put together the draft plan.

MS. TORNES: So basically -- it's Angie Tornes again. It remains the same as it is now and in that each party presents their case and FERC makes a decision?

MR. CLEMENTS: Well, yes, it is. But we think if you look at it, you'll agree that it's a better process for getting there.

MS. TORNES: Um-hmm.

MR. CLEMENTS: The record on which that decision is made ought to be better than it is now typically. There are these study criteria that other people are going to have to address when they want studies and to which applicants are going to have to respond if they don't want to do a study. So this will have been something built up in which the director can hopefully make a rational decision.

MS. TORNES: Yeah. That's better than it is now.

MR. CLEMENTS: Yeah.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. Just so I understand right, you're talking about Box 11 there?

MR. McKITRICK: Um-hmm?

MR. NEUSTIFTER: The only type of dispute that can be taken beyond that is -- is it a dispute pursued by a conditioning agency, right, so the applicant doesn't --

MR. CLEMENTS: Right.

MR. NEUSTIFTER: -- have a recourse after Box 11 either?

MR. CLEMENTS: That's correct.

AUDIENCE PARTICIPANT: And if it's any consolation, the applicant is in the same boat as the

other agencies.

MR. MARTINI: This is Bob Martini at DNR.

It would seem that since there are a lot of misconceptions all around this room -- and obviously this isn't a rule, finished rule, yet -- but when it is finished, it would be helpful to have someone who knows the rule to attend the first meeting between the agency and the public and the applicant there to explain what the new rules are. We've had an awful lot of questions just in this room today. We've all read this stuff. Some of us have participated in discussions about this for -- for several weeks and months. And I think it's safe to say we still don't have a really clear idea of what each step is supposed to accomplish.

So I think it would be useful for FERC to build in some kind of education process that explains to people who are going to use this rule, how it works, how it's intended to work, what's going to happen from your point of view for each one of these stages. So when everybody starts out at -- on a new license they know.

MR. CLEMENTS: Actually, we're already -- there -- we have an implementation team in place which is supposed to look at the draft. In the final

rule when that gets, you know, massaged out and determine what exactly it is we need to have done and ready to go, the effective date of the rule or even before including like the guidance document I was talking about. And then we've also got -- we're putting together a training team. And the anticipation is that team will train people internally and I presume externally about this and how it's supposed to work.

We're also identifying existing licensees who are going to be first in line when this thing kicks in who will have a notice of intent date, you know, coming up when the effective date of the rule is or whatever the transition period is. And I assume we will get in touch with those people beforehand right away and say, okay, how can we help make it work. Because there's going to be tremendous pressure on us inside the building to make sure that this thing works.

And I think we've only got like nine in the first year relicenses that would fall under this. I think it's -- it's a fairly low number. So it's some that -- you know, it's a number that we can probably work with and try to work out the kinks with -- with experience. And, you know, we'll

probably have a roadshow like this more than once.

MR. McKITRICK: We're just going to give John an open plane ticket for 365 days.

AUDIENCE PARTICIPANT: Do you have a question and answer area on FERRIS for these questions or some other place where you could get a quick answer by E-mail?

MR. CLEMENTS: That's not a bad idea. I kind of like that. Sort of like a --

MS. MOLLOY: Ask John.

MR. CLEMENTS: Ask somebody else but ask somebody. Yeah. We could have kind of an in-house guru that is trained to respond to these things timely.

MS. MOLLOY: Dear John questions.

MR. NEUSTIFTER: One thing on the dispute resolution process, and I think maybe I should file a written comment on this, but I -- the -- it doesn't seem that the conditioning agencies are limited to disputes only regarding studies that relate to the area of their conditioning authority. And it would seem to me that would be, you know, that would fit with the logic of it that if they have a, you know, they can't raise a dispute regarding a study that doesn't relate to the area of their conditioning

authority.

MR. CLEMENTS: Do put that in your written because I believe that was our intent is that that's, you know, just to keep it focused. And if it doesn't say that, I think it should.

MR. NEUSTIFTER: Yeah. It doesn't seem to say that. No.

MR. CLEMENTS: Okay. Yeah.

MR. McKITRICK: Okay. Dispute resolution process. Are we ready to move on?

MS. MOLLOY: Public participation.

MR. McKITRICK: Public participation.

Lloyd, did you bring it up?

MR. EVERHART: I think I brought it up. Yes. Lloyd Everhart of Xcel Energy. I think I brought that up because I know there is a concern about increasing the public's role in, you know, I don't want this to be misunderstood because we have actively involved the public in all of our licensing processes. But I think that it may be going a step too far to give every individual member of the public the same role as an agency basically. The way I read it, that's what's being done. So they could be hearing disputes. Licensee would have to file comments and respond to comments from individual

members of the public. And I just think that it's -- it's going to place a burden on the licensee. It's going to be -- be more paperwork for the licensee. And I just think maybe it's going a little step beyond what is actually necessary as far as the public's role.

Because, after all, they are represented by the agencies. And the agencies should be representing their constituency. And they do have the opportunity to take comments to the agencies and adhere to the agencies. So that's just my personal take on it. Maybe others don't agree with that. But I think maybe it's going a little farther than what is actually necessary.

MR. CLEMENTS: And in one of the many working drafts of these, there were references, too, on that very matter. Nongovernmental organizations in the context of dispute resolution instead of just the public. And as you can see in the final version it talks about the public. But so the issue has been there. It has been discussed. And it's still open to discussion. So don't --

AUDIENCE PARTICIPANT: I'll save my comments.

MR. CLEMENTS: Yeah. Don't let it drop.

MR. MARTINI: This is Bob Martini from DNR.

On the other hand, obviously you're licensing the use of what amounts to a public resource. And these people really only have one chance in 30 years, maybe up to 50 years depending on the length of a license, to get in and explain what they think needs to be done to offset the gift of that resource to a private organization in some cases.

And so there is I think some justification allowing the public to have a role in what's going to be done with their resource. A lot of people feel very strongly about that. A lot of them don't believe that the agencies, certainly DNR, represent them. In many cases we have been countered with some of the individual publics that we serve on several issues in FERC relicensing.

So I don't think it's adequate to expect that the agencies are going to carry the water for all the individual citizens. And I think that the public participation process in the last ten or 15 years has been very poor for FERC licenses, at least the ones I've been involved in. Most of the public doesn't really understand what's going to happen until the end of the process. And part of that is because they aren't participating. That's

true. But I don't think that there has been an overwhelming effort or even an adequate effort by our agency or by the licensees to involve the public in those decisions. And I think they have a right to be involved in those decisions even if it's inconvenient for us or for the licensee.

MR. McKITRICK: Okay. Good.

MR. SCOTT: Mike Scott from the DNR. One, I agree with Bob's comments 100 percent. And just to add a couple of things, this rule, as we all know, is nationwide. And even though in Wisconsin I think the state agencies do a fairly good job of representing the public's wishes. Although as Bob has said, there are times and sometimes many times when individuals' interests and ideas are opposite what the department's interest and ideas are.

But you have to remember that there's going to be other states and other parts of the country where state agency involvement is not as good as in Wisconsin. And that this rule is going to, once it's promulgated, is going to go on for years and years and years. 10, 15, 20 years from now perhaps the DNR won't be as involved in the process as it is now and the public will be kind of on its own.

The other thing that I might suggest is that, just as a food for thought, not necessarily the best way to handle this is that we have a program in Wisconsin where we mandate that the people that want to be in this particular program, which is an alternative to traditional permitting, that if they want to be in this program, that they have to have an interested persons group which consists of local citizenry. And that that interested persons group is involved in the decision making process.

Now, mind you, that process is not going to be as complex as in the licensing here. But if there were -- that were to take place in the relicensing here that the local -- that the hydrofacilities pool from the local community interested persons and create a group and that group is kept informed and made part of the decision making process and that other local citizens who are interested can put their comments into the concerned citizens group and that group in turn can go to the hydro, that might be one way of addressing public involvement. It's not -- it may be not the best way. But it is one way.

MR. McKITRICK: Thank you. Anything else dealing with public participation? Good. Time

frames for FERC action? I think, Bob, this is where you're trying to hold my feet to the fire.

MR. MARTINI: This is Bob Martini from DNR.

Yes. (Laughing) I think we've all seen situations where license for right now for long periods of time after the -- all of the final application and settlement agreements have been sent in. So I'm just trying to make a pitch for making sure that what is good for the applicants and the agencies as far as deadlines is also good for FERC. We have literally missed by one day and been thrown out of the process on ten licenses on one issue. So it's a very sore point from my point of view.

MR. McKITRICK: So if we miss a day, should we just issue the license?

MR. MARTINI: We can issue -- write the license.

MR. McKITRICK: Is there any contemplation about federal schedule?

MR. CLEMENTS: Well, if you dig into the details, every proceeding would have a schedule, a published schedule. We post it on the Internet. It might be in the -- might be a public notices. But I'm certain it's on the Internet. And at any point, at least certainly when an application is filed, you

will be able to go into the, you know, a Commission's database system, whatever it's called then, and look up the project and find the schedule. And the schedule will include Commission action on say draft, final, NEPA document, issuance of a license order.

And the way things are now, when those schedules get written, they really take on a life of their own. There's a lot of pressure internally at the Commission to meet schedules. And I don't expect that to go away. Especially when there's, you know, the success of this whole effort is going to be measured by things like that. Did you meet your schedules?

So I can't say that if it says 120 days, you're going to get something in 120 days guaranteed. I can only tell you that the internally pressures are there to meet these schedules.

MR. COX: Doug Cox from Menominee Tribe. And I have the same concern that Bob just raised. In a couple particular processes we've been involved in it's been an extreme nature FERC's responses to things we filed and the license itself. One thing I heard in this process is FERC expressing that staff will be involved throughout the process, not only just on paper, but physically in some of these

processes. Am I correct?

MR. CLEMENTS: In all of them.

MR. COX: In all of them. At what point do you expect that FERC staff will get involved, Box 1?

MR. CLEMENTS: Box 1. As soon as that notice of intent is filed someone -- a team of, you know, appropriate Commission staff people will be assigned.

MR. COX: I suspect that may help some of these time frame delays. But the question I have then additionally related to that is you have indicated there won't be any additions to FERC staff. How are you folks going to bear that responsibility?

MR. CLEMENTS: Well, that's the bigger -- the budgeting question that I couldn't answer before and still can't answer.

MR. SCOTT: Mike Scott from DNR. This might be pie in the sky, but with respect to FERC trying to maintain its own time frames, that perhaps if a time frame is missed, rather than just getting internal pressure with respect to that, that there be something built into the rule that monetary penalties be imposed for each day that a time line is missed and that that money that is collected then go into a resource and HASBIN (phonetic) fund for the

particular system that's affected.

Again, it's pie in the sky I know.

But it is -- you know, money is the big incentive here. And if FERC is required to pay a penalty and that goes to fish and HASBIN, I think that would be better than just saying, well, we missed it and everyone is under stress, but here is your -- here is your one-year license extension. And we'll try it again next year.

MR. CLEMENTS: Notwithstanding the desirability of that suggestion, it would require legislation. This assumes that we don't get any legislation. If the energy committee does something, then I guess we'll go back to square one.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. Just one comment on that. If FERC were to pay the money in, that would end up increasing their -- the cost of the hydrooperation which would end up being paid by the licensees the next year and as part of our annual charge billed. So it would really be coming out of the licensee's pocket given in that situation.

MS. TORNES: So all the more incentive
(laughing).

MR. McKITRICK: FERC time frames? I guess

we've already talked about the licensee role and dispute resolution. I think we've covered that sufficiently. Study plans, details and time frames. We talked on study plan some. But somebody brought that up and wants to --

MS. MOLLOY: I think it was the level of detail, and I think it was Lloyd.

MR. CLEMENTS: I think it was Lloyd.

MS. TORNES: I know what he was talking about. Well, I don't want to be on the record necessarily.

MR. MCKITRICK: Well, you are. So we resolved that?

MS. MOLLOY: Well, I got the impression his concern was how much detail is required in the study plan to -- and the time frames and everything. I think he wanted to know, you know, how detailed we -- do we have envisioned a really detailed study plan or just an outline?

MR. CLEMENTS: Well, we don't have a -- we don't have a specific vision on that. If you kind of read the regs as proposed, the study plan I presume in its revised form would be more detailed than in its initial form simply because it would be informed by the comments and the site visit and the, you know,

and the meetings that the participants have had. And that it will become more refined. But we don't have -- and I don't -- I'm not sure there's a way that we could define in the regulations criteria with respect to how detailed it needs to be, you know, at a given point. I mean these things just get worked out as people work through them together.

And our expectation is that people will work together in good faith to come up with a study plan that makes sense.

MR. McKITRICK: Doug?

MR. COX: I think that the draft is -- has gotten -- sorry. Doug Cox, Menominee Tribe. Draft has gotten a little more clear than the last discussions we've had on this. One thing we commented on was the formulation of things like the aid quality objectives and quality assurance plans and development of study plans. And those are very detailed things. And those may go to some extent to clear up the vagueness of the study plan and the adequate details.

MR. McKITRICK: Okay. Good.

MR. MARTINI: Bob Martini from DNR. It would seem that if you don't have those details, it may be too late in the one-year adaptive management

meeting where everybody sits around and says, well, how did the studies go this year. If you need two field years on a study and you've decided at the end of year one that the study design that was filed was not detailed enough or it -- it didn't include elements that were necessary to get the desired results, then you might need another field year after that second one. And so detail is really important on the front end, not in the middle.

And right now the system I think tries to evaluate whether the detail was there in the middle which is important. But it -- but adding that detail in the front saves a lot of effort and time later on.

MR. CLEMENTS: Yeah. I don't think anybody here disagrees with that. I'm just saying we can't sit here and articulate with any specificity what degree of detail is necessary, you know.

MR. McKITRICK: I think --

MR. CLEMENTS: Given the variety of things that are going to be subject to study and all the things that go into that.

MR. McKITRICK: In the boxes I think, as John said, from the beginning to Box 11 when the study plan is finalized and submitted there is

opportunity to say -- talk to the stakeholder groups, including obviously resource agencies, and that interaction should then find the study plan. I mean there's your opportunity to resolve that around what level does it need to be. Not all of them are equal project to project or from resource to resource. So working together through this informal process should reach the detailing you need.

MR. GEARY: Dennis Geary, Normandeau Associates. I think there are a couple things built into the proposed rule that will contribute to better detailed study plans being arrived at earlier. One is -- well, one, you know, if you -- it's just good practice to get together with the agency ahead of time anytime there's a need to generate information. But beyond that, there's the responsibility on the applicant to develop the proposed study plan pretty early in the process.

But before that there's the response of the agencies and other entities to the preliminary application document and their comments and request for studies. And I believe criteria No. 6 gives the agencies the opportunity to propose a methodology and also justify that methodology relative to generally accepted practices. So there's -- there's I think

some things built into this proposed rule that should lead to better study plans earlier on if the criteria are adhered to. And we're going to talk about the criteria next.

MR. MCKITRICK: Criteria will be next, right. Anything else? I'm sorry. Patti?

MS. LEPPERT: Yes. My name is Patti Leppert. I'm with the Federal Regulatory Commission. And guess to help Bob Martini clarify this whole issue. If you turn to page C-32 paragraph 71, there is -- in it states because the integrated process would include stakeholder participation which includes the federal and state resource agencies, the NGOs, whoever is involved in this, new collaborative process in study plan development, periodic reviewer results and opportunities for amendments and study dispute resolution. The integrated process does not contemplate any additional opportunity for participants to request information and studies after the license application is filed. So this new process brings in this collaborative effort. And this may help the group here to understand how proactive this integrated licensing process can be from Box 0 all the way through to have a success that we Commission staff hope it will be.

MR. McKITRICK: If there's -- what I'd like to do is take a 10-minute break before we get into study criteria. That could be a longer discussion. But if -- Bob, did you have something you wanted to bring up now or after the --

MR. NEUSTIFTER: I think it would be -- it will fit in well now.

MR. McKITRICK: Yeah. Why don't you go ahead now?

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. Yeah. I think the detail in the study plan I mean is going to come as a result of the process. You know, assuming you've got applicants and agency people involved in trying to come up with good study criteria. I know from us in Michigan, the DNR has got a standard list of study criteria and a very detailed list of how they believe these studies should be done and that.

And, you know, we put out a draft study list. And they respond to it. And it goes through that process back and forth. And, you know, the detail comes along. One question I had that I had before on Box 12 with the Commission issues a preliminary decision on the study plan, at that point does the Commission take sort of an independent look

at it to see, you know, is this a good enough list of studies? I mean is it possible the Commission might say, hey, these people forgot something that should be covered and add another study to the list on their own because they felt it would be needed?

I'm just wondering if that sort of thing is by review by the Commission.

MR. CLEMENTS: The theory of this is when the NOI is filed, staff will be assigned at that point. So the -- it -- in all these points, all these boxes previously where there are comments and meetings, the Commission's professional technical staff will have been there. And they, too, will have had their shot at it.

So that if, for instance, and this is an interesting thing, once the preliminary determination is issued, if the Commission staff wanted studies to be done, and the decision was that, you know, they didn't get 100 percent of what they wanted in a study, they don't have a dispute resolution process either. They have to, you know, our staff would have to live with that. But they will be there.

MR. McKITRICK: But isn't there language -- correct me if I'm wrong, John -- in like Box 11 that

it's -- or that order from the office director would
be the study plan --

MS. MOLLOY: Yeah.

MR. McKITRICK: -- as modified? So I mean
it could be something other than --

MR. CLEMENTS: Yeah.

MR. McKITRICK: -- the licensee actually
proposing another study plan.

MR. CLEMENTS: Yeah.

MR. McKITRICK: Yeah.

MR. CLEMENTS: Yeah. It could be, well,
something different than what anybody proposed.

MR. McKITRICK: Exactly.

MR. CLEMENTS: Including the Commission
staff.

MR. McKITRICK: So I thought the question
was there a chance for modification of the study
plan. The answer to that is yes.

MS. MOLLOY: But I mean we've designed it
to minimize that.

MR. McKITRICK: Right.

MR. CLEMENTS: We're hoping that the wise
counsel of the Commission's counseling staff will
help us with a lot of these disagreements before they
get to the dispute.

MR. McKITRICK: Let's take a 10-minute break.

(Short recess had.)

MR. McKITRICK: Thanks. It looks like we still have the hearty souls left. I'd like to finish up if we can. I think we finished the study plan, details, time frames and said we'd move onto the study criteria. Dennis?

MR. GEARY: Yes. Dennis Geary, Normandeau Associates. Since I brought this up and since there were three hands shown, so this wasn't exactly a grounds fall of interest. So I'll make a couple editorial comments here and see if I can generate some discussion.

From my point of view, I think this may be the most important section of the proposed rule to the applicant from the licensing point of view. Because, to me, it puts a significant amount of accountability on the agencies and other entities that might request a study.

Whereas, I think in the past, the justification requirements that were in 16.8 or something like that could be dealt with in a fairly perfunctory fashion, which some states did and some states did not.

So, to me, this is a really important part of the proposed rule. And I think one that if you're thinking about all of the dissatisfaction expressed by some with the dispute resolution process, if the criteria are really adhered to and work the way they should, I think what you do then is reduce the need for dispute resolution. And this is what I would hope would happen.

I know when I was in your group out in the drafting sessions we're on, that was kind of the consensus of the folks there. It's like you recognize the dispute resolution as a necessary evil in a sense. But if you really develop very good criteria and they work the way they should, that maybe you can stay out of the need for dispute resolution.

So I don't have any particular heart -- with any of the criteria. I think they, you know, given the lists I've seen, this is as good as any. I don't see any significant omissions. You know, I think that there was a question about whether the -- the one that asked about expressing costs of the methodology versus others versus the way one of the other lists had it. It's as good as any. I don't have any particular heart, as I said, with

that. So that said, maybe some of the other folks, whether they share my sentiments about the criteria or not, will express their own.

MR. CLEMENTS: They're in 5.10 (b) if you're still looking for them.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. One possible problem I can see with the criteria, I mean if you go through most of them -- I mean -- okay.

I mean a lot of times a study can be proposed that's I mean a good study and may incrementally add slightly to what's, especially when you get to like the second year studies or something, that might slightly add to, you know, what's been gathered already. I mean if you look through most of the first study -- first study criteria, I mean it's -- something that adds even slightly to what you've got, you would seem to pass. And I think it would be good if there were criteria to it to say whether or not the time and the resources required and the limitations, time limitations, of getting a license out in a timely fashion. I mean I think those sort of balancing criteria should maybe be a little more explicit.

I suspect they come in partly through

7. But I mean a lot of times if a study is proposed, you know, in the abstract would be a good study, but it wouldn't really add very much and it would stretch out the time period and take a, you know, more time than is really available for getting things done and an application together in a timely fashion.

MR. CLEMENTS: That's one of our specific questions. And Appendix B relates to this criteria in 7. And it asks basically for -- compare that to an NHA proposal relating to cost. And the NHA proposed criteria is more along the lines of some kind of a demonstration that the incremental information is to be gathered would justify the cost of gathering it, which again is kind of a subjective thing too.

But it's a little more explicit statement that there should not to be, you know, limitless amounts of money spent on obtaining minor bits of possibly useful but not particularly important data. And so I'm sure we'll hear a lot about that in the written comments. And of course on the other -- the far end of the spectrum, we're hearing you need data, you need data, and cost should not be relevant at all. I don't think that's going to sell with the commissioners. But there's -- I

guess we're just kind of looking for a reasonable ground in between and a way to articulate that.

MR. NEUSTIFTER: Okay.

MR. McKITRICK: Anything else dealing with the study criteria that's been proposed? (No response) All right. The question about the integration of Endangered Species Act in this process was also brought up. Is that --

MR. GEARY: Yeah. Dennis Geary, Normandeau Associates. I brought that one up too. And it's more -- I think it's a process that I personally haven't worked a lot in the Midwest, really didn't have to go through in great detail. And I don't find a whole lot of guidance in the rule.

I know there's a recommendation that the licensee request be designated to be FERC's designee in conducting informal consultation which accelerates the process which I think is a good thing. But then it refers to one of the -- IHF or something or whatever group documentation that was put together.

And it really doesn't, to me, give a whole lot of comfort on making sure you got the right folks from NYMPHS or Fish and Wildlife involved.

Sometimes you talk to their

relicensing folks and their protective resources
folks aren't involved. And you find out maybe later
that you aren't really doing what you need to be
doing relative to a particular species or maybe not
really certain all the requirements to study or not
study populations within or near the project boundary
or where the affected area is. I don't know. I
just -- to me, it's a process I'm not super
comfortable with. And I didn't get a whole lot of
comfort in how the proposed rule dealt with this
process.

MR. CLEMENTS: This was one of those ones
where, when we were talking with the federal agencies
and, you know, preparing this, we never -- we started
that discussion about what, if anything, we ought to
say here about melding the NEPA process and the
consultation with the ESA process. And we never
really reached closure. It's not because we didn't
get a consensus. We just couldn't get there in the
time we had. We're continuing those discussions.

And we're expecting to have more in
the final rule in how, you know, those two processes,
if you will, would work together. We did want to get
designated federal reps in there at the beginning.
So we've got that much of it done.

And in the draft license application there could be the draft biological assessment done by the license applicant's federal rep. The circumstances were, you know, favorable if you were able to get to that point. And, similarly, a license application could include a draft with respect to the listed species. But it's -- there's kind of mechanics of what happens beyond that where it can get more sticky which is when do we get the BO. And there's specific time periods in the joint agency regs at 50 CFR for time they have to do a BO and for us giving extensions. We haven't quite figured out all the nuts and bolts how we would fit those time frames in with these or adjust those to make them work with those.

But it hasn't been dropped. But I think we have a meeting scheduled on the 16th with the other -- with NYMPHS and Fish and Wildlife to talk about that and see if we can come up with something.

MR. GEARY: Thanks, John. I'm glad you're still talking to them. I was kind of surprised to see some of the critical comments after the draft rule came out that said some of the agencies felt they were shut out of the drafts process which,

according to what I saw, kind of surprised me.

MR. CLEMENTS: I'm biting my tongue here.

MR. McKITRICK: Go ahead.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. If there is something worked out regarding Endangered Species Act, is there going to be any opportunity to see it before it comes out in the final rule?

MR. CLEMENTS: My theory is if we are able to come up with something, you know, quickly, it would be presented or made public or thrown out for people to chew on either at the -- we got April 10th -- is that when it's coming up -- the April 10th meeting in Washington which seems a little bit early, considering we're doing this and we're doing next. And if not then, I think we'll try to have something ready for the drafting sessions at the end of April, first couple days of May. Because it will be important for people to be able to look at any proposal we've got at that point and give us feedback on that. So those seem, to me, to be the two opportunities to get that done if we can.

MR. McKITRICK: Anything else with ESA and integrated process? (No response) Question about -- I guess this was -- is there a need for the draft

application? That I think is probably one of our questions, and someone else brought that up.

MS. TORNES: I did. Angie Tornes with the National Park Service. I -- my first reaction was let's say P forest (phonetic) and do away with it. Because I have never seen one draft application change from the draft up to the final in text. But then I heard that it's desired to keep it because people get a sense of what the final will look like and allows them to prepare.

And I think mostly of NGOs for comment in getting their -- if they want to intervene and all that type of thing. So I brought it up just as a discussion item and wish that there was some change between the two. But there never is.

MR. CLEMENTS: I think the principle issue we've had here or the people have raised is if we're going to have a draft application, do we need to do the whole thing? Or couldn't we just circulate the draft, Exhibit E, which is the environmental analysis, which is what everyone really cares about, you know, instead of reams of stuff on detailed data on project facilities and operations that nobody -- we'll just skip over and go right to the, you know, the issues, the stuff we care about.

And so I'm expecting to get comments on that. I've heard through the grapevine that in either Charlotte or -- what's that place, New Hampshire?

MR. McKITRICK: New Hampshire.

MR. CLEMENTS: New Hampshire that there were a number of people saying we could just skip everything but the Exhibit E because that's what people care the most about.

MS. TORNES: The only thing, though, in noting for the recommendations, comments, sometimes there's reference to appendixes unfortunately of local recreation plans. And you have to kind of go into those to make sure that everything is correct in the draft. And that's the only disadvantage.

As far as the engineering components, I could probably be dropped out and maybe the fisheries people would feel differently about the appendixes that relate to their issues. I don't know.

MR. McKITRICK: Draft application?

MR. CLEMENTS: We're also thinking in terms of just volumes of work to do. But the draft on the final are pretty close together. And a draft application, you know, at this stage and this kind of

process could be a mighty big fat thing. And you might have a lot of people getting it.

And it seemed to some of us that it might be a real burden on the applicant to produce this huge thing and send it out. And then, you know, 90 days later turn around and do the whole thing again.

It maybe made sense to slim it down or isolate the most relevant portions to help, so we just wanted to hear from folks.

MS. TORNES: I agree that if you can reduce it in a way that is acceptable to pretty much everybody, I think everybody would prefer to have a smaller document on their desks and in their files and things like that.

MR. McKITRICK: I don't know how many in anticipation of this, you know, concurrent settlement agreements or anything like we did in some of the ALPs or not, but I mean if that's in the licensee's mind, I mean if you're trying to negotiate a settlement, use it probably towards the end and at the same time producing documents. I just don't know. I'm just bringing that up as a considered issue.

MR. NEUSTIFTER: One consideration --

MR. McKITRICK: Just --

MR. NEUSTIFTER: Oh, I'm sorry. Bob Neustifter, Consumers Energy. One thing in addition to the volume is cost, too, for the oversized engineering drawings and things like that. I mean it gets pretty expensive even though they were end of being relatively thin.

MR. McKITRICK: Okay. Anything else?

AUDIENCE PARTICIPANT: I guess --

MR. McKITRICK: Name, please.

AUDIENCE PARTICIPANT: Just one reaction to the commentary about draft going into the final and then, you know, that being within 90 days and that sort of thing about the need to regenerate all that information.

I guess I go back to the first subject matter that we had in a PAD. And you're essentially asking the same thing to happen there with a revised PAD that they sent out with a whole heck of a lot more information than you might have even in your application itself.

MR. NEUSTIFTER: That's -- it's a little off the subject, but as long as we're on the revised PAD, I mean even if nothing else changes for the revised PAD, you may have to file or submit portions

that actually changed.

MR. CLEMENTS: And yeah. And if you have specific thoughts about that, you know, between now and April 21, please put them on paper for us because that would be great.

MR. McKITRICK: And before we leave all this, I want to give everybody, you know, an opportunity, one, to back up. If you've had some brain child of an idea, we could do that. Or if as you thought through this we've left out something that's really important to bring up, this is a good opportunity. Because I think that was the last bullet we had. But I just don't want to rush away without people having an opportunity to either revisit or recap. Yeah. We got a couple takers. Just name --

MR. SCOTT: Mike Scott, DNR. Not to necessarily revisit or recap, but the bullets that are up there are the bullets that we in the audience have thought up and discerned and presented to you.

And I guess my question at this point is, is there anything that you folks from FERC are interested in having us comment on or things that perhaps other workshops have addressed that haven't been addressed here that you folks are thinking, gee,

why hasn't Wisconsin addressed some of these things?

I guess we'll never know. I mean now is your opportunity to kind of query us -- and we still do have some time left this afternoon, an hour or so -- if there is anything outstanding. Or have we actually covered everything that needs to be covered?

MR. MCKITRICK: Those of you -- those that have attended more of these meetings than myself, I'll let them talk about things that have come up. But I will reference everyone to the Appendix B in the NOPR C-101. That is a list of our questions I think that we have brought up. Some of these we listed in the presentation, slide presentation. But, here again, there's a reference in back to the paragraph number. If there's anything else --

MR. CLEMENTS: Well, there's one that's in there that I've heard very little about. And it's a concern to me. Is whether this whole thing ought to apply to original license applications. We've had some comment that they're much harder to develop in the kind of time frames that we're talking about here.

And I realize it's because you may have, well, first if there's no project on the ground

and, therefore, you may not even be able to articulate very clearly the study requirements that would apply. You might be starting from a zero base on data. But you're providing or proposing something that's brand new. It might be, you know, just sort of hard to get it all done in the kind of time frames that are contemplated here.

And maybe it doesn't make any sense to apply this to originals but only to relicenses, which we anticipate is going to be the vast bulk of the licensing workload.

So if people want to give us comments on that, especially in their April 21 filings or even now, I'd be delighted to hear that.

MR. SCOTT: I'll just make a quick -- Mike Scott, DNR -- quick comment on that. And I think I probably share everyone's thoughts in the room here on this. Well, maybe not. If there's some disagreement, let me know. Because I don't think in Wisconsin we're going to be getting any new hydroelectric facilities, at least not in the next lifetimes of anybody here. You know, 30, 40, 50 years. I just don't see it happening.

So I think everyone's presumption is that these licensing processes, although they could

apply to new licenses, in all likelihood only apply to relicensing. And if there was a new license that were to come in, that it should go through a different process and a much more lengthy process. Two study seasons would not cut it.

MR. NEUSTIFTER: Thanks. Bob Neustifter, Consumers Energy. To some extent, this is -- these comments are not based on experience because I've never dealt with an original license application. But one -- for applicants for an original license, I would think that would be an instance when they could propose to opt out and use a traditional method. I mean I think that would be a good basis for it seeking to get out of this and this process and get into the traditional process.

And also I think there's -- in Michigan and maybe in Wisconsin as well, I think there still are a few UL dockets out there with small projects that still haven't gotten their applications in. So it's possible there might still be a few stragglers.

MR. CLEMENTS: Those folks would be grandfathered I would assume. Well, no. It would depend when the application ultimately was filed, so you never know.

MS. TORNES: I have a colleague in Alaska -- Angie Tornes with the National Park Service -- who deals with a lot of unbuilt projects and going through the original license. And I know she has complained about the lack of information up front. And, to me, it seems that the preapplication document would be very helpful up front rather than waiting until the end as in the traditional license to get all the information.

So I think there are some elements of this that could be applicable with changes in the time frame. Maybe that's what you're saying, Mike?

MR. SCOTT: Um-hmm.

MS. TORNES: Okay.

MR. NEUSTIFTER: Bob Neustifter. But I think even if you go the traditional route, you still end up filing the PAD.

MR. CLEMENTS: Yeah.

MR. NEUSTIFTER: But it would still be there.

MR. CLEMENTS: But after that, all those deadlines and schedules would tend to fall away.

MR. McKITRICK: Anything else that you'd like to bring up, discuss, other opportunities?

MR. GEARY: Yeah. Dennis Geary,

Normandeau. You were talking about thoughts we might have had after we touched the subject, and we did go back to the PAD. And we're talking about the size of it and usefulness of information. And this is something Bob Martini alluded to. And I think it's very, very important in that document to represent the current license, the current operating conditions, the license requirements, any modification orders. Because since as we proceed, we're taking on the sort of the face of a NEPA document and that is the existing operation. It is. And it becomes the no action alternative. It is the NEPA base line which is a real issue in the process. So I think anyway, you know, that it should be required that the current operation is reflected as clearly as possible.

And then in regard to some of these other historic documents that are the way the draft reads now would have to be included with what's distributed. And Arie and I were talking about this. It seems like something as simple as a listing of the information available and something equivalent to the PIP, the historical documents that might be of interest to certain people, that they're available. If some of them are digital and they're available on

a web site or a CD, fine. Otherwise it's this giant pile of information in files that can be available to the public but don't have to be duplicated and distributed with very little value.

So I think I just had some very strong feelings on what should and shouldn't be included in that document in terms of its ongoing usefulness in the process.

MR. McKITRICK: Okay. Anything else? Anything John or Liz would like to bring up?

MR. CLEMENTS: I would just like to thank people for coming and giving us this input. It's been real helpful. We can keep going as long as you want.

MR. McKITRICK: No. No. I'm not trying to close it down as long as there's comments. But I would say that the deadline for comments is April 21st. I mentioned -- I take it, Liz, away here, is that there is no penalty for filing early, that we would certainly appreciate that.

MS. MOLLOY: It's been noted it's a tight time frame between the 21st and hell week. And so if anyone has them ready before the 21st, feel free to file them so we can get started looking at them and take the bulk that will come in on the 21st.

MR. NEUSTIFTER: Bob Neustifter, Consumers Energy. I would just like to thank staff for, you know, going through all those outreach sessions and making sessions like today available. And also to thank the Commission for providing for it. And I know it's a long drawn out process. And I appreciate the extra effort that's been put in to provide for outreach and these regional sessions.

MR. McKITRICK: That's appreciated. This is probably one of the most public transparent type of regulations that I'm sure a lot of us have ever seen. And it's nice to know that people appreciate that.

Realizing that -- that we still maintain a web site dealing with this, there is additional information being put on. Transcripts are being put on. So if that's helpful to you, feel free to visit that. I'll make -- we still have these. If you need additional copies, take them with you. If there is nothing else, I certainly appreciate your participation. I think it's been extraordinarily helpful. And we thank you for participating with us. And thank you very much. (Applause)

(The workshop concluded at 3:09 p.m.)

STATE OF WISCONSIN)

) SS:

MILWAUKEE COUNTY)

I, Rose M. Coulthart, Registered Professional Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that the preceding workshop was recorded by me and reduced to writing under my personal direction.

I further certify that said workshop was taken at the Hyatt Regency, 333 W. Kilbourn Avenue, Milwaukee, Wisconsin, on the 3rd day of April, 2003, commencing at 9:12 a.m.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto set my hand and affixed my seal of office on this 9th day of April, 2003.

Rose M. Coulthart, RPR/Notary Public

My commission expires

August 27th, 2006