

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC & TRIBAL POST-NOPR REGIONAL
WORKSHOPS.

PUBLIC MEETING

THURSDAY, MARCH 13, 2003

- - -

BE IT REMEMBERED THAT, the public meeting in the matter of Public & Tribal Post-NOPR Regional Workshops was taken before Mary Jacks, Court Reporter and Notary Public, on Thursday, March 13, 2003, commencing at the hour of 9:00 a.m., the proceedings being reported at 1401 Hayden Island Drive, Portland, Oregon.

APPEARANCES

JOHN BLAIR, FERC

MONA JANOPAUL, US-FS

LARRY CROCKER, FERC

KERRY GRIFFIN, NOAA FISHERIES

JOHN CLEMENTS, FERC

LIZ MOLLOY, FERC

ANN MILES, FERC

TIM WELCH, FERC

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

PORTLAND, OREGON

THURSDAY, MARCH 13, 2003

9:00 A.M.

MR. WELCH: Good morning, everyone.

Welcome to the first of six regional workshops that we're conducting around the country. We'll talk about first notice of proposed rulemaking for a new hydroelectric licensing process.

Before we begin, I probably need to go through the -- sort of the requisite list of housekeeping items. Bathrooms is the number one. Most of you have probably been here a lot longer than me, but for those of you who haven't, the restrooms are actually through those doors right here and they're sort of behind us. But to save you the embarrassment of having to get up in the middle of the meeting and walk right through to go to the bathroom, you need to go out that way, go to your left and just keep walking all the way around until you get back -- to back there; okay?

The second thing is cell phones. I know we all have them now. I always hate when you go to meetings and the first thing they tell 'em, everyone must shut off their cell phone and no one ever does it. So don't shut off your cell phones. Feel free to use them. Just try to put them in a place where you can answer

relatively quickly and try to cancel the eighteen twelve overture of the theme from Rocky or whatever. Just try to answer it fast is all.

MR. BLAIR: Put it on vibrate.

MR. WELCH: That's right, yeah, put it on -- Well, I don't want to say that. It's on the record.

So I'd like -- The first thing I'd like to do is I'd like to get one of your yellow books, if someone could hand one to me. I hope all of you have one of these by now.

This is going to be sort of our guide for the day. It has our several enclosures. It has our agenda, which I'm going to go through with you in a moment.

It has the -- the entire -- the -- the notice for this meeting. Then it has the slide show, the Power Point presentation that I'm going to be going through in a few minutes.

And -- And -- And most importantly, it's got the NOPR itself, both the preamble and the -- the reg text itself that is red line strike out so it'll make it, hopefully, easier for you to follow exactly what we've done with -- with the regulations here.

So this will be your guide for the -- for the day and there's a couple of other things in here

that I'll -- I'll kind of go over with you as -- as, sort of, we get to that point in -- in the program.

So turning to the agenda, as it says, our -- our workshop goals here are to hear and consider stakeholder concerns about the proposed rule and to find avenues for stakeholder consensus on solutions to those concerns.

So we'll probably -- We'll begin with a little bit of welcome and introductions. I'll introduce our -- our panel. Then I'll -- Then I will go through the proposed rule itself with a little Power Point presentation, talk about some highlights. Then we'll have time for some clarification questions, any questions that you might have about, you know, I didn't quite understand what you meant by this and what exactly did you mean by that? We have a number of questions that we wanted to go over that we had proposed in the NOPR.

And then unlike our previous -- our pre-NOPR regional workshops, we're going to try to do things a little bit differently this time. Instead of, sort of, having the part in the very beginning when you go -- come up and sort of do some -- some formal testimony, we're going to try to -- to the best of our ability, we're going to try to make things a little bit more in -- informal.

And so the next step is for issue identification. And that will be your opportunity, starting at about 10:30, 10:45 after the break, for a -- to under -- to identify the key issues about the NOPR that you want to talk about at this meeting.

So once we sort of get all those done before lunch, we're going to try to prioritize those issues, you know, take little votes on, you know, what's, sort of, important to people, and then we'll prioritize those issues.

And then this afternoon right after lunch we'll, sort of, begin a -- what we're calling an interactive discussion of those particular issues and that's the way we'll -- we'll pretty much spend on the rest -- rest of the day.

However, if you come with some sort of -- of -- of prepared comment or prepared statement, we have some time at 3:45, sort of, during our summary session for you to either file those with the stenographer over here for the -- and they will be put on the FERC record, or if you would like to -- to read them into the record, we have time for that at the end of the day. So is there any -- any questions so far?

This is our stenographer, Mary Jacks, right here. And as I said, if you have anything that you

wanted to place on the record, you can file it with --
with her and it will be made part of the -- sort of, the
transcript package that will be put on the -- on the FERC
record.

So I think probably we have a few too
many people to do in -- in -- individual introductions
today, but let me -- borrowing from my friend Ron
McKritick, he likes to -- just sort of give people an idea
about who the heck's in the room so just -- just a quick
show of hands. How many of you are applicants or -- or
licensees, you have projects? Well, that's what I
figured.

How many of you are with state
resource agencies? Okay, how about -- How about federal
agencies? Okay, non-governmental organizations? Last but
not least, consult -- I mean, consultants?

I'd just like to start. I -- I think
we have a pretty -- pretty good mix of folks and I hope
that that will benefit us later when we, sort of, discuss
these -- these issues in the afternoon.

So without further ado, let me
introduce some of the panelists and I'll let them, sort
of, take their introductions by themselves, so -- oops,
Indian tribes, Indian tribes, there you go, and we'll see
you all tomorrow, as well.

Let's -- Let's go ahead and introduce our -- our panel up here, sort of, beginning with John Blair.

MR. BLAIR: John Blair, I do licensing in the west, especially in Oregon and Washington State.

MR. CROCKER: I'm Larry Crocker. I'm advisor to Chairman Wood. I'm just here to listen to what everyone has to say, and hopefully, intelligently report back to the chairman.

MS. MILES: Ann Miles, I'm deputy director of the vision of hydropower environment and engineering that was newly formed this week. We -- We used to -- The -- The division used to do both gas cert -- certifying gas, natural gas pipelines as well as hydro, and just this week we have divided into one division doing gas pipeline work and the other doing hydro work, mainly environmental reviewing.

MS. JANOPAUL: Mona Janopaul, Forest Service out of the Washington office, Washington, D.C. office.

MR. CLEMENTS: John Clements for OGC.

MR. GRIFFIN: I'm Kerry Griffin with the National Marine Fishery Service. And just to clarify, we haven't really changed our name. We've just changed our common name. So instead of referring to us as NMFS,

the director of NOAA, Admiral Watenbocker (phonetic), would like everyone to recognize that we're all part of NOAA. So we're now commonly referred to as NOAA Fisheries, NOAA Weather Service, NOAA Ocean Service. But our official name is still the National Marine Fishery Service.

MS. MOLLOY: And I'm Elizabeth Molloy from FERC. I'm the tribal liaison for the rulemaking.

MR. WELCH: Okay. And if I fail to mention, like I think I did, I am Tim Welch. I'm also a fishery biologist in the office of -- of energy projects.

Just a -- a quick note, if you -- if you look on the cover of -- of the program here, you'll see the -- the -- the FERC symbol, and it also says co-hosted by the Department of Commerce, which is NOAA Fisheries, the USDA, which is represented today by the Forest Service by Mona Janopaul, and the Department of the Interior.

Now they are our co-hosts today. They played a huge role in the drafting of this rule that I'll explain to you in a bit. However, I would like to -- to emphasize that this is FERC's rule. This is -- This is our rule. We put it together. The commission voted on it. Our friends from our sister federal agencies are here today and can -- and sitting up here with us at the table

to answer any questions that -- that you might have regarding, you know, what -- what their particular role in the process has been and what it will be and what kind of role they'll play in some sort of a new process.

Okay, now before I, sort of, begin going into the -- sort of, the highlights of the -- the NOPR, as we call it, I'd like to talk a little bit about, sort of, our journey and where we've been and, sort of, where we go -- where we're going.

We kicked the whole thing off back in September of -- of 2002 with a public notice that sort of -- that set the stage for a series of regional workshops much like this and stakeholder drafting sessions. So last fall in this area, we were in Tacoma. I'm sure many of you were there. FERC and the resource -- federal resource agencies conducted both public and tribal forums in order to gather information from the public from various stakeholder groups on what a new licensing process should look like.

So after we finished with that in the middle of December, we had actual stakeholder drafting sessions in Washington, D.C., opening up to everyone. We had various stakeholder groups come into Washington for a two-day session where we sat down and talked very specifically about conceptual matters associated with the

licensing process.

We had people split up into different groups working on various parts of the process. So we took all that information from both the forums and the drafting sessions and we sat down at the table with our -- with some of the sister federal agencies from the middle of December through the middle of January and we actually put together the specific language, much of which you'll see in -- in the notice that is before you today.

So that's the past. On February 20th, the commission voted unanimously to issue the notice of proposed rulemaking, which I'll talk to you about in a minute. During March and April, as I said earlier, we'll be once again going around the country conducting regional workshops, talking to stakeholder groups, finding out what specifically you think about the proposed -- about the proposed rule. This is our first one here in Portland. We're also -- In a couple of weeks, we're going to be in Sacramento, California. We'll be in Manchester, New Hampshire, Charlotte, North Carolina and Milwaukee, Wisconsin.

So what -- After we, sort of, conclude all those regional workshops, we'll get a little bit more specific. And once again, we're inviting you to come for our stakeholder drafting sessions in Washington, D.C. for

a whole -- a week this time, like four days. We're calling this hydro hell week, and where you're coming, and -- and actually put you to work.

And once again, we'll probably split people up in -- into groups and people will actually be working on very specific parts of the rule and very specific language. So we hope that as this process moves along we'll get more -- more and more specific.

There's -- The detailed instructions for how you register for these stakeholder drafting sessions are in the -- in the notice and enclosure -- in enclosure A, sort of, setting up the workshops and we're going to be having on line registration, so you're all welcome to come to that in -- in Washington. And I can't say enough -- more about it.

So once again, in the beginning of May, once again, we'll sit down with our -- our sister federal agencies and we'll begin drafting of the final rule and it'll end to -- 'til about -- to the end of May, and then we'll spend the remainder of the time preparing the final rule for a commission vote which we anticipate will be in -- some time in July of -- of 2003.

So we're very excited about this process. We think it's been very beneficial so far. We've gathered a lot of good ideas. Now what we've heard

at all of these -- these -- these sessions that we had previously, the -- probably one theme sort of stuck out among all of them we heard was integrate, integrate, integrate. So low and behold, to no one's surprise, the NOPR includes an integrated licensing process. Now we think that there's something basically in there for everyone to latch onto. There's -- If you look hard enough, probably there's something in there that you may have suggested or you may have read about or you may have thought about.

However, we all know that the devil is in the details. So now that's why we're here today to help -- we want you to help us, sort of, fill in the very specific details about, well, you know, I sort of like this but if it was like this, then, you know, it would -- it would really meet my needs. So those are the types of very specific things that we wanted to talk with you about today.

So having said that, let's go into the rule itself. Now as I said earlier, the proposed rule creates a new, integrated licensing process. And basically, we feel that this new process will both improve the timeliness of the process, the efficiency of the process and will produce a better product, that is a license, than the current, traditional process.

So it sort of breaks down into three, sort of, general areas. The first year of the process is spent working on a process plan and study plan. And this is a new concept that we're going to talk about a little bit earlier, a process plan where all the stakeholders and especially the agencies that have various processes under -- under -- under different processes both under the Federal Power Act, maybe the Clean Water Act. We get together and we put together a process plan about how all those things are going to fit together. And we use that to sort of begin to develop the study plan within the first year.

Now once the study plan is -- is completed and approved by FERC, the studies and the actual application will develop in the -- in the second two years or so depending on the amount of time in the study plan allotted -- allotted for the studies.

Once that two-year period is up, it's time to file the license application. And the application processing at FERC, we think it's going to take about one and a-half years, and I'll talk a little bit about -- about these times in a little bit -- in a moment.

Now in addition to creating a new licensing process, we also did some -- some tweaks to the traditional process. What we did was we looked at some of

the things that we felt were good attributes of the integrated licensing process and we applied them to the traditional. And the two things that stand out is in the traditional we've increased public participation and we've also changed the rule to allow for better, early study dispute resolution, so we'll get into a little bit more of that in just a moment.

Now as I said before, the integrated licensing process improves the process efficiency and it does that, as I said, by allowing the application to be prepared in the beginning of the process right along with the NEPA scoping that the commission is charged with. Now that's in stark contrast to the traditional process. As you all know, that the NEPA scoping is done after the application is prepared. We scope the issues. We felt it would make much more sense to scope the issues in the beginning as the application was being developed.

As I mentioned earlier, the integrate -- integrated licensing process also coordinates with other participants processes. One that comes to mind is 401 water quality certification done by the states. And we've also increased the public participation leading to the efficiency so a lot more people are involved effectively early on allowing for more efficiencies.

Now it improves the timeliness of the

process by requiring early FERC staff assistance. Once again, in contrast to the traditional process where the commission staff has typically been involved after the application is filed. The commission will be there to guide the process right from the very beginning. And as I said, the timeliness is going to be guided by that process plan that I just told you about, and the schedule for all the participants, including FERC staff. And that will hopefully lead to the early study plan development and both informal and formal study dispute resolution which I'll get with you in a moment. Once again, as opposed to the traditional process where study dispute resolution typically takes place late in the process after the application has been filed.

Now to sort of ill -- illustrate the -- the timeliness of the -- of the integrated process, we sort of prepared this chart. And what we have here, this is the application processing time. This is the time the commission receives the application until the time that the commission issues the order issuing the license or -- or denying the license.

So that would be the zero point on the X axis is the time the commission receives the license. So this -- this top bar is actual data that we have from the FERC 603 report that indicates a median processing

time of 47 months under the traditional process.

Now we obviously have no hard data for the integrated process because we haven't implemented it yet, but we believe that because of the time savings with the early dispute resolution, the -- the involvement of FERC staff up front, establishment of schedules, we're -- we think we're looking at an average time of about 17 months or so give or take a few months.

Now the other thing I'd like to point out to you on this graph is this red line right here, which is at the 24 month, in other words the two-year period in the process, and this will be the time that the -- if this was a relicensing, this would be the time that the license would expire. So you can see under the traditional process the commission quite often has to issue annual licenses in order to keep the project operating.

We -- We do not anticipate that the commission will hardly ever have to issue annual licenses under the integrated process because we're hoping the new license will be in place by the time the -- the current license expires.

So I have another -- you know, more than a couple -- another seven points I'd like to make, significant aspects of the NOPR. I'd like to talk about

process selection, the change in cooperating agency intervenor policies, tribal consultation, advance notice of -- of license expiration, the pre-application document, which replaces the initial consultation package, study dispute resolution and contents of the license application itself, some of the changes that we're proposing.

So process selection: The -- The ILP, the integrated process, is now the -- the third process and it joins both the traditional and the alternative as -- as the third licensing process.

The important thing to remember is, though, the integrated process is the default. In other words, in order to use the -- the traditional and alternative you must request that from the commission, solicit comments from the public in your notice of intent of your selection and the commission staff will then use those comments to determine if the -- either the traditional or the alternative licensing process is appropriate for your particular project, so the integrated process is the default.

Now a little bit about cooperating agency intervenor policy. So in an effort to coordinate the efforts of primarily the -- the federal agencies, the NOPR proposes to change the FERC policy in regards to cooperating agency intervenor.

Now as most of you probably know, our current policy is that another federal agency cannot be a NEPA cooperator with FERC and then be a party or, in other words, an intervenor at the same time. Our policy is that the agency has to make the choice, one or the other. So in order to promote more cooperating under NEPA, we're proposing to change that policy for -- by now permitting both intervenor status and cooperating agency status on the NEPA.

Now there are definitely a number of concerns about this. And mostly, we're talking about concerns with our ex parte rule, which only allows FERC staff to have discussions with intervenors on the record. So we're going to modify that rule to require only disclosure of specific study -- technical study information. That means if -- if NOAA Fisheries comes forth with some sort of a study or a -- or a data study to the FERC staff, we will disclose that information on the public record.

Some of the things that wouldn't be on the public record, though, is, sort of, the exchange of drafts -- of NEPA drafts, like if we were cooperating with the Forest Service and -- and FERC put together the first draft, send it to them, they would make -- make some comments and we sort of go back and forth. That would be

allowed under our rules with the thinking that eventually that whole document is going to become public anyway.

Tribal consultation: This is something that we really worked hard on. We had a series of -- of six tribal forums where we met specifically with Indian tribes and we heard a lot about how they felt the tribal consultation should go in a licensing process.

So we're proposing that the commission staff would initiate early discussions very early in the process with affected Indian tribes to begin to develop the consultation procedure for the entire proceeding.

So instead of -- of coming up with a whole procedure for -- that would -- that would fit to all tribes, we would meet with the -- the affected tribes in the very beginning and set out a unique, specific consultation process for that tribe in that particular proceeding.

Now to help facilitate that, we're also proposing in the notice to establish a position of tribal liaison. Now as Liz Molloy said earlier, Liz is the tribal liaison for the rulemaking. We are proposing to make that a permanent position, a person at the commission that would be the tribal liaison for all matters at the commission involving Indian tribes that would be a point contact person. That person would work with the staff on

this tribal consultation.

Advance notification of license

expiration: This is -- This is not in the -- in the -- rule language itself. It is not a -- a specific regulation. It's going to be our practice that significantly in advance of the notice of intent, which -- which begins the process, FERC would send a letter to a respective applicant, sort of as a -- sort of a wake-up call, like, hello, applicant, guess what, you know, as you probably know, your license is expiring on this date and your notice of intent is due on this date.

And hopefully, we can give enough information to the applicant about what the process is going to be, what we expect in the pre-application document, so that they'd be thinking -- sort of begin thinking about those things well ahead of when the process actually begins. We'll also talk about the process selection and how that works, as well.

Now the pre-application document: As I said earlier, this is something that's going to replace what's now called the ICD, the initial consultation document, the initial consultation package. And the -- the idea here is to provide all the participants in the proceeding the available environmental information on the project. And that will provide the basis for issue

identification, study request and will sort of begin as sort of a precursor to the -- to the NEPA scoping document.

Now you'll go -- if you go through the actual rule language that's in your yellow books, you'll see the very specific things that we'll be asking for in that pre-application document. We're very interested to know what you think about that, whether you think there needs to be more detail, less detail. We'd like to talk a little bit about that today if -- if time allows.

Now the form and the content of that pre-application document, it's broken down into resource areas and this is going to be the -- the precursor to what's going to eventually be the application, in other words, the -- the Exhibit E. So we're trying to set it up in a way so that, sort of, this -- this, sort of, living document that goes through the entire process and eventually becomes the license application. So basically, if you're a participant in the process, you're going to, sort of, see the same document, sort of, evolve as -- as it moves along.

Probably one of the biggest topics of discussion at our pre-NOPR forum was the -- the idea of study dispute resolution, and I -- I'm -- I'm sure people are going to have a lot of comments about this at this

meeting, as well.

Now as I said, it was very important to come up with some sort of a process where we could solve -- we could solve study disputes very early in the process before the studies are done as opposed to after the application is already filed.

So, sort of, the foundation of the study dispute resolution is the study plan criteria. There's a series of eight criteria that we expect a study requester, whether you're a resource agency or a tribe or an NGO or an applicant and -- and FERC staff to, sort of, follow. There's a series of -- I don't know, is it eight -- seven or eight -- eight items, I think.

MR. BLAIR: Seven.

MR. WELCH: Seven, thank you. So -- So, sort of, take a look at those and we'd like some feedback on those.

Now the process begins by having the applicant file a draft study plan for -- for comment around -- among the process participants.

Now there's, sort of, two phases to the study dispute resolution. There's two phases. The first part or the informal portion of study dispute resolution, if you look on your flow chart, there's a study plan meeting where folks get together and if the

applicant for whatever reason is not including your study request or has modified it in a way that you don't totally agree on, we have a two-day meeting to, sort of, resolve those differences informally and FERC staff will participate.

And thank you, John, for holding that up. I did fail to mention that our little process in addition to being on the walls there is also on the back of your books so that our little -- our little flow chart here as we're, sort of, talking about various aspects of the rule, you'll, sort of, be able to, sort of, follow along, and I apologize for not pointing that out to you earlier.

Now the second part of study dispute resolution, FERC would then approve the study plan after this informal dispute resolution with any needed modifications, so FERC would actually -- the staff would approve the study plan itself.

Now the second part of study dispute resolutions is -- is a little more formal part and it's open to resource agencies including state and tribal water quality agencies that may dispute the FERC approved study plan.

Now how this is -- how we're proposing that this would work is FERC would then -- if there was a

dispute of some kind, FERC would then convene an advisory panel that would consist of FERC staff, a different staff person that has been involved earlier, so some -- some fresh eyes from FERC, resource agency staff and then a -- what we're calling a third party neutral, in other words a third person that would be acceptable to these -- these two people. Now this process is going to take place in a very short period of time. It's going to move along quite quickly.

Now what's the applicant's role? The applicant would provide its comments on its study plan and the needed information regarding the study plan criteria that this panel is going to need to make a decision.

So once the panel, sort of, absorbs all that information, the panel makes a finding as to whether the study criteria that I told you about in the very beginning -- is it met or is it not met? And that panel then would provide its findings to the FERC director of -- of energy projects and that OEP director would make the decision on the dispute with respect to the study criteria and any applicable law or FERC policy.

I finally want to talk a little bit about application content. One thing we did was we went around to the FERC staff and we asked FERC staff, hey, what is some -- give us some information that we typically

have to ask for in almost every proceeding, that we have to always ask for in additional information request that's not in the regulations?

We found a -- a number of things that FERC staff would like to see that would help us make our licensing decision a little bit easier and then we wouldn't have to go out with -- with additional information requests. And that's changing the regulations to require both minimum and maximum hydraulic capacity. I think right now it just requires minimum and information on the cost to develop a license application which would be used both in FERC's 10A balancing effort and it would also give us, sort of, a bench mark in basically how these processes are working in regards to costs.

Project boundary information for both license and exemptions, a little bit of change there. Even minor projects will have to provide information on project boundaries.

Now the Exhibit E, as I said earlier, one of the big changes is to make the Exhibit E more in the form of a -- sort of, a common, environmental document that most of the participants, hopefully, are, sort of, used to seeing.

So we have it set up in the regulations so that there will be some very distinct areas

in respect to the different resource areas, whether it be aquatics, cultural resources, terrestrial. It'll be broken down into affected environment, the applicant analysis, the applicant's proposed measures, any unavoidable adverse impacts and then the applicant's developmental analysis. So once again, as I said earlier, we're beginning to morph this into what's probably going to end up being the -- the final NEPA document.

At the end of the -- of the -- of the notice, we summarize a series of questions that we posed throughout the notice, and that's at the very end. And it shows you the paragraph number where we asked the question. So we've taken that summary and we've summarized that into a few questions on the proposed rule.

Now we're not -- we're not going to box anybody in here about what we're going to talk about here today. We're only posing these questions to sort of stimulate your thinking a little bit and let you know what are the -- some of the -- some of the issues that are still sort of hanging out there for FERC that we'd like -- like a little -- a little more detailed information. So I'm going to quickly run through these -- these -- these questions and you can look at them during the issue identification time and hopefully they will -- they will stimulate your thinking a little bit.

So I'm just going to go through these very quickly. First, are the contents of the pre-application document appropriate? Just talk to you a little bit about that.

Is the proposal for early contact with Indian tribes adequate to ensure improved tribal consultation? Are the proposed study criteria associated with dispute resolution, are they adequate? What modifications, if any, should be made to the study dispute resolution process?

Should resource agencies provide preliminary recommendations and conditions prior to the draft or the final license application as opposed to afterwards? Are the recommended time frames associated with the proposed integrated process, are they adequate? Look very specifically at -- at those -- at those time frames. There are -- They're the little numbers that are, sort of, in between the flow chart in here.

Is a draft license application -- is that even necessary or should we go right to the -- the final? Are the recommended deadlines for filing of the 401 water quality service application, are they appropriate? What, if any, criteria should be considered in determining the use of the traditional licensing process?

I think right now the -- the language that -- that we're proposing says good cause, so we're wondering in order to make that determination do you have any specific criteria in mind about if an applicant wanted to use the traditional as opposed to the integrated licensing process.

Does the proposed rule adequately address concerns associated with the change in federal -- cooperating federal agency policy? What recommendations do you have regarding the roles and the responsibilities of the FERC or the proposed FERC tribal liaison?

Are there sug -- any suggestions on how the regulations could be modified further to accommodate small projects? How can FERC best inform Indian tribes about future relicensing proceedings? And finally, is the explanation in the NOPR for the existing procedures for consultation under NEPA section 106 -- are they significantly clear?

So keep in mind these questions as we move into our next phase of our meeting, our issue identification phase, and -- and let us know what you think about some of these questions or any other questions that you might have that -- that we haven't posed to you here today. Okay, so how are we doing here, John?

MR. BLAIR: Good.

MR. WELCH: We are, okay. So now that I've finished, sort of, going over the process, I guess I'd like to open it up to the floor as soon as my microphone guy gets out there.

We'd like to open it up to the floor for any clarifications questions that you might have. Now I'm going to be the facilitator today so you are to pose all your questions to Larry Crocker -- No, to Ann and John Clements -- would answer any questions as they pertain to FERC.

And as I said earlier, Kerry Griffin and Mona Janopaul are here to answer any questions that might pertain to the resource agency's effort, so do you want to answer questions, too?

MR. BLAIR: Please state your name for the stenographer and state it clearly. If it's an odd spelling, please spell it.

MR. WELCH: So let's open it up with Nan.

MS. NALDER: Nan Nalder, that's Alder with an N on the front of it. Back to your slide where you showed the difference in the process at the time on the traditional and the I -- what do you know from the ALP? Where does that fall in between those? I'm surprised that I didn't see a draft of that.

MR. WELCH: Yeah, go ahead.

MS. MILES: Yeah, right now, the median time for processing an ALP is almost the same as what we're proposing for the ILP. It's 16 months. So that's -- that's the real world.

MS. NALDER: Thank you.

MR. CARRINGTON: Gregg Carrington, Chelan PUD. This question's for Larry. No, I'm kidding. Can you explain the relationship between FERC and the cooperating agency? In particular, I was interested in knowing more about would FERC have agencies draft sections of the NEPA document and what do you see happening if there's a disagreement re -- regarding required measures when you did the NEPA document? How would that be documented?

MS. MILES: We've -- We've done a number of cooperating agencies, not so many recently since we did firm up the policy on not being able to be open intervenor and a cooperator, but we've done it different ways depending on how much involvement really the cooperating agency chose to -- to want.

FERC has always been the lead agency with the other one being the cooperator. We've done it so that we've done most of the drafting and the other agency has done the review, or we have also done it but in much

-- less frequently where we've drafted -- each drafted different sections and then exchanged them for review.

One of the things that we are proposing in the -- this rule is that the resource sections, the technical sections dealing with the various resource issues on the project, the water use, the fisheries, the terrestrial, the cultural, that they will stick strictly to analysis and not have any recommendations in them.

Right now, our document sometimes has some recommendations in those sections, but what our -- we are hoping, then, is that with the cooperating agency we would be able to get to agreement on the studies and the analysis.

However, our conclusions based on that can be different and they might be different. We will always have a section -- well, right now, we're proposing to have a similar section that we do right now in our environmental documents, which is one on comprehensive development, and that's the section where we take all of the various issues and look at what is -- what we consider the best balance for the use of the resource and in the public interest.

We also have a section dealing with recommendations under -- Fish and Wildlife recommendations

under section 10J, and that, again, would be the commission's deter -- preliminary determination on those measures.

I think we're hoping that in working with the coop -- federal cooperating agencies that we're able to come to some syncopation on what we think the -- the measures should be, both for them and their mandatory conditions and for us and what we might recommend.

However, if we disagree on that, we will each need to put in the document what we think is the appropriate recommendations to the commission for us and for the federal agency, their recommendations for their mandatory conditions.

MR. GROZNIK: This is Frank Groznik,
G-R-O-Z-N-I-K.

And as a bit of a housekeeping question, I would like to get the name, address, phone number and e-mail of the panelists as well as the -- the people that signed up this morning and have that available for all of us that are here at the workshop.

MR. WELCH: Okay. We can -- We can do that.

MR. BLAIR: It'll be after lunch.

MR. WELCH: Greg.

MR. HALLER: Greg Haller, Nez Perce

Tribe, and I apologize in advance because I'm going to probably ask this question tomorrow so you're going to hear it again from the tribal audience, but what, if any, criteria has FERC laid out for deciding when an applicant can use the traditional process or the alternative licensing process? And what input would agencies or tribes have in deciding when an applicant can choose?

MR. CLEMENTS: Right now, as drafted, it's simply good cause. We're looking for comments specifically on whether or not there ought to be identified criteria to make the decision or perhaps a different standard on whatever you think is best.

The way it works mechanically is that when the notice of intent and the pre-application document are filed, at the same time the applicant or potential applicant has to issue public notice requesting comments be filed with the commission on whether or not it --

Well, if -- if the applicant wants to use the traditional process, that notice has to be issued requesting comments be filed with the commission on whether or not it should be permitted so that you would get the NOI. At the same time you would look at it and then you would have a period. And it's very short on these time frames. It's a couple of weeks to put in your comments with the commission on whether or not we should

permit the applicant to use the traditional process.

For the ALP, it's a little bit different. We haven't changed anything there because that is consensus based. The applicant needs to, before the NOI and the pre-application document are filed, get with the agencies, the tribes, the NGOs and whomever and try to put together a consensus package for going forward with an ALP. So those -- those are the mechanics and the -- the criteria, such as they are, at this time.

John, can I say something before we -- we go forward in response to Mr. Groznik? I don't have any problem with putting out our names and addresses and e-mails, but for purposes of filing comments on this, you need to file them with the secretary to get them into the public record.

I'm always happy to talk to people and clarify things but don't send me an e-mail and think that it's going to find its way into the public record.

MR. WELCH: Go ahead, Nan.

MS. NALDER: I have two questions that are somewhat related. One of them is quite often when you're sitting in the boiler room putting together a document, there's a -- a level of trust that's required and sometimes you goof up procedurally, which is usually where you get caught up in court.

I'm concerned about a cooperating agency being able to, you know, take notes on that and later come in and intervene with the knowledge that they have a mess that got in the sausage factory.

Rulemaking is quite often -- and -- and EISs are quite often done under a tremendous amount of pressure and a lot of people trying to do things. And sometimes you don't follow all the procedures to the dotted I and crossed T. That's generally where people get in trouble with NEPA. My concern is if you're involved with that, you're going to know where those things are and be able to use them as an intervenor.

MS. MILES: Nan, I actually wanted to say one thing, rather than answering that question, I think this topic of cooperator/intervenor is a topic that a lot of people have concern about and I think it's one that we probably want to put on our list and have a detailed discussion about this afternoon, so if we could defer that to the discussion so we can deal with all of it at once and how everyone's feeling and get some give and take going.

MS. NALDER: My second --

MS. MILES: -- that would be good.

MS. NALDER: -- to add onto the detail list, public participation, you really -- you really need

to think through how to assist the public in being involved in a FERC proceeding.

We're talking about a national resource of tremendous importance, and quite often you have a lot of people in communities who have long-held, adverse feelings about things that didn't happen during the term of the first license and I have seen that used to completely derail what ought to be productive meetings.

I -- I -- I really think we need to have a session on public participation and how FERC could help those publics organize and have somebody represent them instead of 27 of them standing there yelling.

MS. KLATT: This is Pam Klatt from Meridian Environmental, and I -- I also have two questions. On one of your slides, you indicated early FERC participation and I'm wondering how you would expect to see that. Would that be someone from FERC actually on site at the meetings or would it be through conference call? Would it be through FERC contractors? How would we expect to see that participation?

MS. MILES: I think it could be all of those. The idea is that we would be active participants; that we'll have a -- a team assigned of the appropriate resource folks with a team lead from FERC. And I imagine in the beginning, they'll need to be on site so they can

get to know everyone and know the project.

And then, obviously, as all of us do in this room, we have budget constraints. We're going to have to work through how -- how we have enough people to be able to give each project the resource that it needs.

MS. KLATT: Okay. And my second question is on the dispute resolution over study plans. There's a discussion in here, a note about a third party. And from what type of pool would that third party, neutral person be pulled from?

MS. MILES: Okay. We're proposing in the rule to ask people who would want to serve in that role to let us know and we will keep a list, like we do third party EIS list. We'll have to do some sort of solicitation and qualify people in some way. We haven't worked that out at all and we're certainly open to suggestions from you all if you've got ideas.

MR. GROZNIK: This is Frank Groznik again. I applaud the -- the new process, but it seems to go against human nature. And what I mean by that is people are deadline oriented. How do you propose to instill the sense of urgency that is needed in these meetings three years before an application is filed and to keep that sense of involvement through that process?

It's great to start early, but as we

all know, people have lots of things to do. When they find out a deadline is coming up, then -- then they get involved and then they complain about the fact that they haven't been allowed to be or understood or didn't know that they could be involved earlier. So is there as part of the public process a way of dealing with that obvious issue?

MS. MILES: It's an issue. You've -- You've hit the nail on the head there that it could be an issue, but our hope is that in the majority of cases by getting everybody together at the beginning, laying out what each agency or other group needs to do in order to work through this process, seeing at what points in the process it's most critical that each person be involved and setting -- setting a schedule that puts all that together -- I mean, time lines for everyone that, actually, it'll be easier; that people will have an expectation of when they need to have critical involvement in what's going on.

And I -- I think our sense is that there's been a call for structure; that the ALP works very well in some cases with some groups when it's somewhat structured. But some folks have said it's -- it's -- it's hard to know maybe what process people are in and -- and if it doesn't have a lot of structure, when to be

involved, and that's when we've heard you lose people.

So our hope is that -- that it'll -- we are able to keep people involved when they need to be involved and not when they don't need to. And that's what we're going to work toward.

MR. CLEMENTS: Can I add something to that, Ann?

MS. MILES: Sure.

MR. CLEMENTS: If -- If you look at the -- on the back of your yellow book, if you look at the -- the process, that thing is -- is full of deadlines.

It's full of specified time periods in which the commission will issue notices and things will happen.

One thing that's very different is in this regime the -- the commencement of the proceeding begins with the notice of intent and the pre-application document. It doesn't begin when the application is filed. So the -- the train is rolling right from the time that notice of intent is filed.

There will be schedules published by the commission. There will be notices with deadlines. It will be as if an application had been filed. And if the train is -- is rolling and -- and someone chooses not to get on board, they're going to be left behind. So I think there -- there's an urgency built into it. Well, maybe

not an urgency, but there's, I think, pretty powerful incentives to -- to stay with it or be left behind.

MS. JANOPAUL: I -- I wanted to point out that during the -- the pre-NOPR meetings last year in the stakeholder drafting sessions there was a real tension between the desire for deadlines and certainty and the desire for flexibility to make sure there was adequate time to complete studies or settle.

And with the -- the integrated licensing process, the -- the first draft that we put out from the interagency hydropower committee, there was a lot of criticism of dates here and dates there, that some dates were too short, some dates were too long. So we -- we want deadlines but we want meaningful deadlines.

So in -- in this draft and -- and, you know, we -- we talked about this a lot on the interagency basis. We -- We've kind of taken off some of the deadlines here and we're hoping that in the comments filed on this you will propose what you think are meaningful deadlines but have sufficient flexibility to meet your needs for what we hope are -- are settlements in many or most cases.

MR. GROZNIK: This is Frank Groznik again. As -- as a follow up, the -- the process works very well with identified publics, organized publics, and

-- and I -- you know, I know you -- the FERC relicensing, there are a number of identified publics, NGOs, that want to be recognized.

I just want you to think about those non-identified publics that live in the general geographic location of the project and how to get those people at least informed about what's going on.

MR. MODI: Yes, Hari Modi, M-O-D-I.

It is not clear to me looking at this chart under the dispute resolution -- how much time are we allowing for the panel to really come to a decision? And thinking along that line, this time line of 16 months for DIP, have you thought about what effect it's going to be that could delay that process and what it could cost the licensee, like more money than was originally budgeted? So two questions.

MS. MILES: As far as the panel, you may want to write this down, there's -- if you want to look at your booklet, the -- the flow chart, 12B, is -- is a -- a mandatory agency would file a notice of a study dispute.

After that, there's -- there's -- this is in the rules. It's not on the flow chart. There's 20 days to actually convene the panel. And then 30 days for the panel to come up with a recommendation. And then

another 20 days for the office of energy projects director to review that recommendation and come up with his final decision. So it's a 70-day process in there.

MR. WELCH: Nan.

MS. NALDER: Another question to put on for this afternoon -- Nan Nalder, I'm not expecting an -- an answer right now but on studies, the -- the topic here is studies and coming to a decision on studies. I -- I would like to see us think through how the cross-resource issues can be blended into study design from the front end rather than having somebody come in late.

I think there is a process that you could use to bring up issues and measures that could be developed in some instances, but maybe they can't. I -- I think it's worthy of considering because I think that the cross-resource concerns quite often are what bog us down, especially if a study design for -- that was done under the criteria for one resource concern does not meet the expectations of study design for the other resources.

MS. MILES: Nan, I'd like to say one thing on that because that is an issue that we did have some discussion about. And built into the -- the process is -- is box nine, which is a meeting just on study plans. And the idea with that is to deal with some of the

cross-resource issues and it -- it may be that, you know, it certainly can't be done in just one meeting but -- but that -- that was what -- that is an informal opportunity to come to resolution about study disputes that people may have or, you know, the interaction of the various studies.

MR. NOE: Cyrus Noe, C-Y-R-U-S, N-O-E.

MS. JANOPPAUL: Excuse me, I'd like to respond to that, as well. I'm sorry, Cyrus, just hang on a second.

Yeah, I -- I'd also like to point out, you know, what -- there -- there's many nice features in this integrated licensing process, but one of the very nice features is that there's scoping ahead of that meeting. And -- And I think there's been a lot of talk since the early '90s about early NEPA, NEPA up front.

And one of the advantages -- tremendous advantages here are these scoping needs that are -- that are cited in boxes seven and eight and a pre-application document that looks like a NEPA document.

So I -- I think we're going to have a lot less of the kind of conflict that we're -- or lack of integration you're talking about if we have these scoping meetings. I think they're going to achieve the integration and scope down the issues of interest for that project and those parties. This is -- There's a lot of

advantages and this is one of them.

MR. WELCH: Go ahead, Cyrus.

MR. NOE: My -- My notes reflect that increased public participation was linked with efficiency. Many, many years ago during the early days of public participation and after it had been tried for a while, Daniel Patrick Monohan wrote a book called {UOn}Maximum Feasible Misunderstanding.{UOff}

In a sense, the question I -- I ask here is about slippage because of -- you -- you can have mass transit and you can have rapid transit but you can't have mass rapid transit. And I'm wondering what sort of slippage -- if -- if you have more public participation, which is a value, that doesn't seem to be consistent with all of the deadlines which are in the -- the new rule.

MR. CLEMENTS: I guess all I can say is that this -- this is a -- is a pretty rigorous, demanding process and I -- I think that's going to apply to everybody who chooses to participate.

MR. WELCH: I guess -- I -- I guess in regards to the -- the -- why it was linked to efficiency is that it would be the -- the effort to get the public participation and get those groups identified earlier in the process as opposed to later in the process when -- when the train has, sort of, already gained some momentum.

We want to identify the issues from the -- from the general public and non-governmental organizations early in the process so that they can be addressed before the train leaves.

MS. BURCHFIELD: Stephanie Burchfield, B-U-R-C-H-F-I-E-L-D, Oregon Department of Fish and Wildlife. I have a question about studies, too. And I -- I guess it -- it comes from a lot of experience with the traditional and the ALP processes where it's the -- the way we read it was the applicant's supposed to prepare detailed, study methodology in advance and we often would get to those initial consultation documents and not have that information in those documents. And it wasn't so much that we were arguing over study methodology. We were arguing that there wasn't any methodology there at all.

And so I'm wondering what -- what recourse is there if you get further on in this process and you still don't have that study methodology? How do you go -- you know, dispute resolution and you're still trying to get that information together?

MS. MILES: Okay, there were some comments on enforcement and penalties and carrots and sticks and probably, you know, the ultimate stick is non-acceptance of an application, you know, that -- finding an application deficient once it comes in.

We didn't choose to put in penalties or anything along those lines. I -- I say the hope is that we are all there including FERC; that if we're not getting what is the appropriate amount of information that everyone needs in order to make some decisions, that we'll need people to get it. I -- I mean, that's sort of what's -- what's built in here. It's -- It's a fairly fast process with all of us there and we hope that that will be -- there won't be too many cases where that's not what we're getting.

We're wanting to give enough guidance to get the detailed information that everyone thinks is needed so I think that's one place that you can help us. If -- If what we have listed in the pre-application document, what's needed in the application, the study criteria, those kinds of things, you don't think sets enough guidance, I guess it is, to what you're really going to need, then, you know, give us that in your feedback.

MR. CLEMENTS: Can I jump in on that one, too, Ann? I'm -- I don't actually remember what specifically are the existing regulations, but if you look in the proposed regulations, there's a couple of places where we -- we try to get a jump on this, and one is 5.5, which is the section on commission notice. But it talks

about the scoping meeting and site visit, and that's at least one initial face-to-face opportunity where you can start to talk about that.

And then section 5.8, which is the applicant's proposed study plan, also requires them to describe the study and the methodologies. And then if you go to the comments on the study request, which is 5.10, that's another -- that's an opportunity for resource agencies and others to explain how the studies that they propose the applicant be required to do -- to explain the methodology that the resource agency or other requester is -- is discussing so that by the time the commission approves a study plan, there should have been discussion of methodology, and I'm just -- I'll speak here, what the heck, I assume the preliminary determination will address study methodology issues so that the applicant doesn't suffer from a lack of clarity in that regard as they go forward.

MR. WELCH: Just a -- Just a note, which I was talking about, section five is the -- is the ILP and just -- and that begins on page D45. Part five begins the ILP integrated process.

MS. MILES: Well, one other thing, the -- the flow chart on the back has cross-references to the various sections of the rule. If you haven't noticed

that, so it should be fairly easy for you to look on the flow chart at a particular step and then turn to the -- more details in the actual rule.

MR. WELCH: Steve.

MR. PADULA: Steve Padula with Longview Associates, P-A-D-U-L-A. First of all, I -- I want to commend the effort to get -- to get this process to where it has gotten as of today. It's only by getting this on paper that it allows us to look at places to make it even more effective, so this is very helpful and -- and I appreciate the effort made.

As John said earlier, it -- it's an aggressive schedule and I don't think anyone would -- would -- would quarrel with that. So I think we need to look for places now to make it even more efficient and more effective, and -- and maybe for this afternoon's more detailed discussion, I'd like to suggest we do focus on the draft application piece of this process.

You know, in -- in all my years of doing this, there are many parts of the draft application that probably never generate a comment, and maybe instead of looking at just taking the existing, you know, requirements for what is an application and having that all show up at that point in time, maybe we focus more on what's really the important information for the

participants to have at that point in time.

And, you know, generally, I think that may -- might be more focused on, you know, where is the applicant's thinking at that moment in terms of its proposals, any alternatives that have been suggested, proposed PM&E measures and -- and the status of information.

And -- And there may be a much more effective way to communicate that information as you're coming out of your -- your second field season and trying to make decisions about final applications than -- than just the encyclopedic approach of everything that's in -- in a draft application as it currently exists in the regulations.

MR. CLEMENTS: Make sure we get that into our discussion. Just to clarify for those of you who haven't committed the -- the contents of this to memory yet, the proposal is that the draft application will be essentially the same as the final license application. And that's part of the question here is, do you need everything that's in there or can you make better use of everybody's time by putting something less than the whole package together at that point?

MR. PEGAR: Doug Pegar, P-E-G-A-R, Douglas Water Power. Is there a distinction between first

time or original licensing versus a relicensing application?

MR. CLEMENTS: No, there isn't. In the proposed rule, it would apply to originals as well as relicenses. We're looking for comment on that but I think there's legitimate question as to whether or not the -- the kind of time frames we're talking about here necessarily make sense for our Greenfield project or whether something, you know, different ought to apply. So if you have views on that, we'd be delighted to hear them.

MR. WELCH: Mark.

MR. BAGDOVIDZ: Mark Bagdovidz, U.S. Fish and Wildlife Service, and I'll spell that, B-A-G-D-O-V-I-D-Z.

I've got a whole lot of questions but I'll just try to keep it to two. One of them should be fairly quick. Many of us were in involved in hydropower licensing around the Northwest, and I'm wondering what relationship does this process have to -- to processes that were already underway? I'm wondering, are they -- are they grandfathered? Is -- Or -- Or is there some -- at some point where you say, yeah, you can go ahead and use this particular process?

And my second question: Is -- is there a relationship between federal agency, cooperating

agency status and mandatory licensing authority? Is there a relationship there at all? Those are the two questions I had.

MR. WELCH: John, why don't you take the first one.

MR. CLEMENTS: Okay, refresh my memory, grand --

MR. BAGDOVIDZ: Grandfather.

MR. CLEMENTS: Okay, grandfathering, transition provisions. Oh, God, they were a horror to draft. The -- The intent here is that everything that's existing now would be grandfathered, but what would happen is if you -- and this will be most of the cases, of course -- have a notice of intent due with respect to a new license application, that -- that will be the trigger point. And there will be a three-month grace period here.

Three months after the effective date, that's when people with a notice of intent would have to apply the new rule, so everybody who's already in the door or everybody whose notice of intent is due no later than three months after the issuance date. So we're, basically, probably talking October or something like that, would -- would apply the existing rules.

Everybody looking forward would be subject to the new proceeding or might get a waiver. The

one exception to that, which is proposed in here, is that someone could -- a licensed applicant, I forget who it is and I forget which provision it is, but there is an opportunity for a consensus-based request to apply a portion or portions, specific parts of the new regime to existing ongoing proceedings.

And -- But it's -- it's not something that would work in a whole lot of cases because the -- under -- as you know, under the existing regulations there's not a lot of opportunity for the public to be involved during pre-filing consultation. So that the deeper you are into the existing pre-filing consultation process, the harder it is to start importing the concepts and -- and procedures that are in here. An alternative -- Is it 4.38 -- No, I'll find it and I'll get back to you on it, but, yeah, that's the idea.

MR. WELCH: And -- And his -- his second question was in regard -- relationship to cooperating agencies and mandatory conditioning authority, is there a relationship?

MS. MILES: Not quite sure what you mean by that. The cooperating agency proposal in here is for federal agencies only.

MR. BAGDOVIDZ: Regardless of whether you have any mandatory conditioning authorities under --

MS. MILES: Yeah, the -- the idea with cooperating agencies is that an -- an agency that needs to do a NEPA document, it would be good to integrate that, to use one NEPA document. So I'm assuming that for most federal agencies, unless they need to do some sort of permitting, they need the NEPA document for whatever decisions they need to make.

It could be section 18. It could be 40. It could be -- those -- those would be the primary agencies that would choose to be cooperating agencies.

MR. BAGDOVIDZ: I guess the reason I asked the question is because the -- you know, as we stated, the U.S. Fish and Wildlife service can prescribe fish passage under section T18, any particular license that FERC issues, but only a very, very small minority of licenses do they actually do that. So I'm wondering what could Fish and Wildlife Service or if official officers come to cooperating agencies, does that presume that we're going to use our mandatory conditions and I -- I don't -- I don't think it does, but -- so as I understood, there wouldn't necessarily be a relationship.

MR. WELCH: Nan.

MR. CLEMENTS: In getting back to your first one, that's 4.38 E4.

MR. WELCH: Got that, Mark.

MR. CLEMENTS: Page D48.

MS. NALDER: Nan Nalder again, and --
and like Steve, I do want to compliment you on putting out
the document so that we can take a look at it and I read
it, every single word, all of it, before because I was
putting the panels for the Northwest hydro --

MR. WELCH: You're the third person,
Nan, that -- that has admitted that in public.

MS. NALDER: My comment -- My -- My
question goes -- Tomorrow, I know, you're going to focus
on tribal issues. I don't think I'm going to be able to
be here tomorrow. But I did work with four tribes in
putting together a panel for our conference and a number
of issues that came up with them that I think should be
shared with people here today who will not be there
tomorrow might be another topic for this afternoon, and --
and I've got them in detail but could we just, like, put a
place holder on that or do you want me to put them in the
record now?

MR. WELCH: Why don't you wait until
we start identifying and then go ahead and speak up. We
got about ten minutes. Oh, sorry.

MS. BONANNO: We're overlooked over
here in this corner. My name is Kristen Bonanno. That's
B-O-N-A-N-N-O. I'm with Oregon Water Resources Department,

and I have two questions.

And one is it seems like the dispute resolution process is, sort of, a -- a steadycentric (phonetic) process. And for example, in -- my understanding of the current regulations is that after you issue -- the applicant issues a draft license application, then there's a 90-day comment period and then there's a dispute resolution process following that, and I'm wondering why that isn't included in this process.

And then the other question has to do with same -- same issue study resolution, and under the formal process you invite some state agencies with mandatory authority to the table to participate and not present them -- there's a 401, but what about other state agencies like water resource? That usually is a water right which I would argue is mandatory, as well.

MR. CLEMENTS: Actually, I didn't understand the first question, if you could run through that again to clarify it for us.

MR. WELCH: She needs her microphone.

MS. BONANNO: Under the current regulations right now, once you issue a draft license application, there's -- then there's a following dispute resolution opportunity where all the table -- all the stakeholders come to the table and resolve any disputes

that they had with the application; right?

MS. MILES: There's a joint meeting.

There is a joint meeting to discuss that, yes.

MS. BONANNO: So under this proposed process, I don't see an opportunity for those people to come together and have the same opportunity after the draft license application is issued.

MR. CLEMENTS: Okay, the -- the theory of this, again, is that everybody is going to be involved from the beginning so that by the time in this process where you get to the draft license application, you will have had all the -- the NEPA scoping.

You will have had all the discussion of the studies. You will have had the -- the commission's pre-application -- pardon me -- preliminary decision. You will have had any dispute resolution that applies in -- in the formal dispute resolution, and then you will have had a season, at least one season of studies and that'll be followed by a meeting where there will be discussion of whether or not studies that are existing need to be modified or -- or extended or, you know, maybe there's -- the data is coming in all crazy and something different needs to be done. And then there's probably another season of studies followed by another meeting before you even get to the draft application being filed.

So the notion is that by the time you get to that point, you -- everybody knows what it is you need to know and the applicant is busily and in good faith engaged in getting that information. So that if you want to raise a new -- if you want to say, wait, here's a new study I want, it's -- it's kind of too late.

MS. BONANNO: All the issues that stakeholders have don't necessarily resolve -- resolve in those studies sometimes and there's an issue about that application when you put information --

UNIDENTIFIED SPEAKER: We can't hear her.

MR. CLEMENTS: Yeah, let's -- let's get you a mike first.

MS. BONANNO: Kristen Bonanno, Oregon Water Resources Department. I guess what I'm saying is that not all the conflicts that arise in a draft applications are around the studies. I mean, sometimes they -- the draft license application includes information that wasn't included in the study that's just existing information out there. There's PM&Es that are put out there that there hasn't been opportunity for conflict resolution and just other things aside from information that isn't surrounded by --

MS. MILES: I want to say one thing,

John. If -- If a number of people feel that that's something lacking, certainly we'd like to hear that in your comments and in our discussion this afternoon.

The other thing is there's nothing to present -- prevent a particular project's schedule from encompassing more than what's here. This is -- This is -- This is what we thought was -- was necessary to move things as early in the process as possible, but if in a particular project the group might decide they want something, they can put that into -- into their schedule.

MR. WELCH: I -- I think her -- and then your follow-up question was on the dispute resolution process about participating.

MS. BONANNO: Water rights.

MR. WELCH: Yes.

MR. CLEMENTS: I -- I'm not sure I see the connection between a water rights application and this because city water right application is made to the state and is processed under the state's proceedings and so I'm not sure what it is that the commission could be expected to resolve with respect to water rights.

MS. BONANNO: Well, arguably so is the 401 application submitted to the state and state processes, and yet you've included that -- that here as part of the dispute resolution and not something similar

where the applicant applies to the state. It also means that in order to get a FERC license.

MR. CLEMENTS: Well, there's -- there's a distinction because under the -- the Clean Water Act and the Federal Power Act, the terms and conditions of the 401 certification become part of the license by law so that is a prescriptive authority within the license. The water right is not.

MS. BONANNO: I have a response to that.

MR. CLEMENTS: Oh, give her back the mike.

MS. BONANNO: My understanding of the Federal Power Act is that they also have to have a water right in order to be licensed under the Federal Power Act, so I guess that -- that distinction, to me, seems a little fine.

MR. CLEMENTS: It's a fine one but a good one.

MR. WELCH: Brett, are you next?

MS. SWIFT: Brett Swift with American Rivers, and I had just two points of clarification with regard to the study dispute resolution process. The first one, obviously, this study plan and pre-application document are pretty -- pretty critical pieces of the

integrated licensing process. And I'm wondering -- if I understand it correctly, the dispute resolution process that was described earlier, after the preliminary determination by the commission -- is available only to agencies with mandatory conditioning authority.

And I'm wondering if there's any ability in this for entities that do not have mandatory conditioning authority to also bring disputes at that point because, like I said, that's a critical document there and if the goal is to resolve disputes earlier rather than later, it seems like that should be available.

And then the second, just a point of clarification, is that dispute resolution process with the advisory panel available only at that stage, at the preliminary determination stage, and not at the other points where there is dispute resolution?

It was a little unclear to me, because there -- I know there's dispute resolution after various status reports, AIRs on the draft, that kind of thing, but it was unclear if those were straight to the director or if the advisory panel would also be available at those stages.

MS. MILES: I'll do the latter question first. The advisory panel, the way this is conceived is that the advisory panel is only available at

this time frame. The rest of it would go director to -- directly to the office director, office of energy projects director.

This may be -- You may be bringing up a topic that we want to spend more time on this afternoon. Oh, here it is -- what -- what is laid out in this process is that it is the -- the dispute resolution -- the formal dispute resolution is for mandatory conditioning authority agencies only. That the -- the opportunity up to that is -- is for other agencies and public to -- to raise their disputes with the group and with -- it can be raised up with -- with -- through the informal portion of this study dispute resolution, the box eight and nine, that that's the opportunity for discussion of disputes and resolution of those, the way this is conceived.

MS. SWIFT: So just to be clear, because it seemed to me like the dispute resolution process straight to the director was available to all parties later in the process. That's not just limited to entities with mandatory conditioning authority, and so that is what I'm understanding is that ability is not available after the preliminary determination.

MR. CLEMENTS: Yeah, after the formal determination when you're in the -- in the conduct of study stage, that dispute resolution, or we were actually

calling that a -- a disagreement at that point just to distinguish it from this formal process, is open to -- it says here any party or the commission staff may file a disagreement concerning the applicant's --

MS. SWIFT: Where are you at?

MR. CLEMENTS: I'm in section 5.14 on page D64.

MS. SWIFT: But that's -- that's later down the road, as I understand it; right?

MR. CLEMENTS: That's -- That's later than the formal dispute resolution process.

MS. SWIFT: So there's nothing after the commission's approved a particular study plan other than the informal.

MS. MILES: You're right.

MS. SWIFT: Okay.

MS. MILES: I think you're absolutely right.

MR. GRIFFIN: Could I -- Could I add something onto that last issue of discussion? The idea is -- I -- I think I see where you're coming from, but the -- the hope is and -- and the design of this process is that in the first informal study dispute resolution opportunity that everyone is -- has the opportunity to come to the table with -- with these disputes and -- and hopefully,

we'll never get to the formal dispute resolution process at all, federal agencies, NGOs and everybody. So the -- I -- I think the focus is to resolve those prior to, you know, the -- the final opportunity.

MS. SWIFT: Right, and -- and my only concern is there's a higher burden for parties later in the process with regard to particular studies or additional information to get that information, so I -- I just raised it for clarification.

MR. WELCH: Well, we've got time for one -- one more question. Stephanie.

MS. BURCHFIELD: Stephanie Burchfield, Oregon Fish and Wildlife again, and I ditto Kristen and Brett's questions about not including mandatory agencies. Having 10J authority, I think you're just taking, you know, our voting power away from us. And for ODFW this really is our biggest issue.

The other thing that I noticed is that you're asking the other -- the -- the federal agencies -- mandatory agencies to get terms and conditions in earlier. I think it's after the -- the draft license application comes out; is that right?

And that works better for the State of Oregon because we have -- and you probably all know about our HART process, our state reauthorization process, and

we -- tied our hands and made us have to come up with this act, our initial 10J, and conditions after the draft license application has come out.

And although Kristen will probably shoot me for it, it's a nightmare. And it's because what comes out in the draft license application usually doesn't have the amount of information we need to come up with conditions.

And I know -- This kind of gets back to my earlier question. I know the answer that you're going to give me is, well, FERC's going to be involved earlier. We're going to make sure we get those studies. We're going to make sure the draft license application is meaningful, and therefore, you guys will be able to come up with TMDs.

I just -- I'm -- I've become a real cynic. So I hope that, you know, if -- if you do this, you have something that these agencies can have meaningful conditions on. Otherwise, we just start positional bargaining and that's not where any of us really want to be.

MS. MILES: Okay, let me say one thing. The rule -- The NOPR doesn't have a request for preliminary terms and conditions after the draft application.

The first time that it's got them filed is -- and confirm that I'm right on this, John, please -- is after we issued the notice saying that the application is ready for environmental analysis, so it's after the application's filed. We did ask that question. We asked that question and we're looking for your comments on it because some people wanted them earlier.

MR. WELCH: Okay, we've been going for quite a bit of time now, so why don't we go ahead and take a 15-minute break and during that break time start thinking about some of those key issues you'd like to discuss. Some of them have already been mentioned so start thinking about those.

Also, if you haven't registered, please do so during the break with John. Thanks everybody. See you in fifteen minutes.

(Whereupon, a brief recess was taken.)

MR. WELCH: Okay, now we -- our time for probably our -- one of the most important parts of our meetings this morning and that's the issue identification.

Now as I said this morning during my talk, I -- I hopefully have prompted you with a few of -- of our questions of some of the issues that we're looking for some more clarity on. This -- Before the break during the clarification question section, a number of -- of

issues began to surface and -- and Liz is going to, sort of, keep track of them up here on the -- on the screen.

And so now it's time to take a look at this list and then bring up any other key issues of -- of matters that you want to discuss this afternoon after lunch.

And as I said earlier, what we'll do is we'll make this list and we'll try to -- we'll try to consolidate as -- as -- as much as we can and keep things in -- in -- in broad topics. And then before lunch, we'll sort of have a little vote about who wants to talk about what and we'll try to prioritize them and, the best we can, we'll spend the afternoon talking about them in that priority and we'll try to get as many as we possibly can.

So who wants to go ahead? Who wants to begin with some issues? Go ahead, Nan. Here comes the mike. Here comes the mike.

MS. NALDER: Nan Nalder, earlier I had mentioned I would like to have a discussion of studies and on the cross-resource aspect of studies because I think that's where a lot of people get totally hung up.

MR. WELCH: Okay. Oh, sorry.

MR. MCMURRAY: Greg McMurray, Oregon D.E.Q. We need to talk about the timing of the 401 application, obviously. But also, we were talking about

that burning sense of urgency. As I saw it, there were no interim milestones that were 401 specific, although you talked about coordination with a 401, so I would like to talk -- like to talk about some kind of interim milestone that's specific to 401 in this process that kind of helps it move along.

MR. WELCH: Okay. We got Mark here and Greg and then Steve. Go ahead, Steve, let her rip.

MR. PADULA: If we could when we get to the afternoon come back to some comments John made earlier on the transition provisions. And there's -- there are a few of those provisions in the NOPR that actually make reference to the filing of a final application 90 days or later versus an NOI deadline, 90 days or later. If we could get clarification on really whether any provisions in the NOPR might actually apply to a license application from an ongoing process that falls 90 days or later, just to see what might be covered there.

MR. WELCH: Mark.

MR. BAGDOVIDZ: Mark Bagdovidz, U.S. Fish and Wildlife Service. One of the things I wanted to talk about is the -- clarifying the role of the commission staff and the role of the native -- native American liaison. Specifically, are they a decision making role or is it a facilitation role?

MR. WELCH: Okay. Anybody else?

MS. BONANNO: Kristen Bonanno of the Water Resources Department. I'd also like to add maybe a discussion about a time out for settlement negotiations.

MR. WELCH: Cyrus.

MR. NOE: Cyrus Noe. I am not a party of interest. I'm a -- I'm a journalist in the process of organizing something called relicensing reporter newsletter, but the question I asked about slippage got slipped on. You have set out a -- a quite rigorous schedule and -- and I'm wondering if that -- if -- if some kind of -- of relief from that because of unforeseen circumstances is a part of your thinking.

MR. WELCH: Anyone else, issues? Stephanie.

MS. BURCHFIELD: Stephanie Burchfield, ODFW. I think it was one of the questions you raised in your presentation, Tim, about how this would apply to some of the smaller operators. The way it looks right now, it applies to everybody and it's -- it's going to be really hard to get them to follow this detailed agenda process.

MR. WELCH: Brett had some.

MS. SWIFT: Brett Swift of the American Rivers. I'd like to touch on the issue that was raised on the questions of accountability throughout the

process with regard to, kind of, adequacy of pre-application document implementation studies, that kind of thing, so kind of that mechanism.

MR. WELCH: Okay. Cyrus.

MR. NOE: Cyrus Noe, again. Access to documents I think is important. There has been some noises made at FERC that -- that information may not be as readily available as it has been in the past and I'm wondering if there are anything apart from the usual ex parte things that might -- might pertain here.

MR. WELCH: Anyone else? Go ahead, Nan.

MS. NALDER: Nan Nalder, I don't know exactly how to phrase this, and, Liz, I promised you I would be brief with my -- and -- and concise, but the issue is when you have multiple uses of hydroelectric project and the benefits flow to water providers, to municipalities, irrigation of districts, all this sort of thing, the -- the process isn't really well defined right now on how that interaction ought to be. And -- And I think it would really help a lot and -- and I'm -- I'm particularly aware of it because I'm working with the water providers in California and Oregon.

MR. WELCH: Sorry, we got -- we got Steve again and Linda.

MR. PADULA: The -- The study status meetings that come at the end of the -- the two years of -- of field effort, I think some more discussion about the -- the intent of those, again -- again relative to what -- what would really be helpful at that point in time in the process to -- to keep things moving along.

I think there's a proposed requirement that there actually be a -- a report generated and then a meeting and then about 45 days worth of dispute effort and so forth. And again, thinking through some of that, and again, I think hearing from -- from the -- all the folks who would be relying on the information, what -- what's really the most effective way to take advantage of those periodic milestones and --

MR. WELCH: Linda.

MS. JONES: My name is Linda Jones.

I'm with Grant County P.U.D. How will this process affect, if at all, the amendment to an existing license process, specifically consultation requirements and studies?

MR. GROZNIK: This is Frank Groznik, G-R-O-Z-N-I-K. And I'm thinking to the practicality of this, and I want to know what about FERC staff and their ability to be involved early and often in this process?

MR. WELCH: Can that -- Can you put

that along with role of FERC staff and availability?

Greg.

MR. CARRINGTON: Quick question about studies again, study timing in particular. There always seems to be in relicensing one or two issues that require more than two years worth of studies and I was wondering if we could talk a little bit about those studies that require, you know, three -- three years of studies and things of that nature.

MR. WELCH: Anyone? Keith, Keith, you got some.

MR. KIRKENDALL: Yeah. Keith Kirkendall, that's K-I-R-K-E-N-D-A-L-L. I'm with National Marine Fishery Service. Couple comments, I guess. The study criteria that I see here seems rather loose. It looks rather familiar to what things have been passed in the ranks, and I guess my concern is if you have an applicant that's -- that's unwilling, then we won't get a complete packet. We're just literally under the letter of the law. We're not going to have the information we need at the end, and so that brings me around to the dispute resolution. And from what I'm seeing here, it doesn't look like it's based on resolving the issues under the technical merits. There's -- There's some other things in here that lead me to believe that's not going to happen.

MR. WELCH: Maybe while you're thinking a little bit, maybe I can ask some of the panelists if they would like to add -- add any questions to the list.

MR. GRIFFIN: Tim, are we going to revisit the -- the list that you provided here or do we have to mention specifically one of those questions?

MR. WELCH: If -- If -- If there's an -- an issue that is brought up by those questions, go ahead and add it to the list, but this will be the list we'll be working from.

MR. BLAIR: Tim, John Blair, tell me the question you're referring to.

MR. WELCH: The questions that I -- I'm -- I'm thinking you mean the questions I posed this morning in my Power Point presentation.

MS. MOLLOY: Tim, that -- that should go for if anyone -- if anyone else wants any of those issues talked about, too.

MR. WELCH: Yes, anyone, yeah, and I -- so go ahead and add them to the list.

MR. GRIFFIN: Right, so if one of these questions in the Power Point presentation interests you, make sure it gets up there --

MR. WELCH: Yes, that's right.

MR. GRIFFIN: Then --

MR. WELCH: I'm with you, Kerry.

MR. GRIFFIN: Then in that vein --

MR. WELCH: I'm with you now. I'm
with you now.

MR. GRIFFIN: Then I'd like to add the
-- a question about determining which process to use and
-- and should there be criteria.

MR. WELCH: Process selection, okay.

MS. JANOPAUL: Process selection
criteria and -- and process. All right, Mona Janopaul. I
-- I'd also like to see something on what are appropriate
changes to the traditional licensing process. There's
been two proposed here. Are they appropriate, not
appropriate? What other may be made to the -- the TLP?

If there's -- If there's anybody who
wants to talk about FERC's role having to do with tribes
and tribal consultation, I -- I didn't see that up on the
list and I -- I don't see why it shouldn't be discussed as
well particularly since we have some agency staff from the
Pacific Northwest that probably deal a lot with tribes.

MR. WELCH: We have tribal issues.

MS. JANOPAUL: Tribal issues, okay.

MS. MILES: We can make that more
specific.

MR. WELCH: Yeah, well, we -- Okay, we do, okay.

MS. MOLLOY: Other than -- Other than clarifying roles of commission staff and -- and position of tribal liaison, are there other issues we want to -- want to specifically pull out there --

MR. CLEMENTS: Tim.

MS. MOLLOY: -- tribal issues?

MR. CLEMENTS: Tim.

MR. MCMURRAY: Sorry, Greg McMurray, Oregon D.E.Q. There's an issue about states with SEPAs where it says non-SEPA states and how to coordinate best with that.

MR. WELCH: So coordinating with state SEPAs, little NEPA or NEPAs. Yes, Nan.

MS. NALDER: I'm going to flush out -- Nan Nalder. I'm going to flush out my tribal issues because I just put it up there as kind of a broad umbrella and --

MR. WELCH: Okay.

MS. NALDER: -- one of the problems that we found was how to define eligible resources that -- that the tribes are concerned about in -- inclusive as opposed to exclusive so far as the definition of what is a property or use, traditional use. That -- That -- They're

referring to the -- the FERC guidance that -- that came out recently.

The other one was why was it changed from a cultural resource management fund to a historic properties management plan?

And on the tribal liaison, the members of my panel wanted to know is the big dog gonna come talk to the tribe.

MR. WELCH: And the big dog would be

--

MS. NALDER: The top dog, they would like to see somebody government to government in -- in high authority come and talk with them.

MR. WELCH: So you're talking about Chairman Wood?

MS. NALDER: They would like to have Chairman Wood.

MR. BLAIR: Tim.

MR. WELCH: Okay.

MS. BURCHFIELD: Stephanie Burchfield. I wondered if you put up there the question about timing of when -- the terms and conditions going in.

MS. JANOPPAUL: I -- I'm -- I'm sorry, what -- what question, please?

MS. BURCHFIELD: The question about

whether -- when the terms and conditions need to be filed preliminarily and if -- if we're going to be guaranteed that there will be enough information to actually develop terms and conditions.

MR. WELCH: Mona, that was our question that we proposed about possibility of filing preliminary terms and conditions in response to the final or the draft application.

MS. BURCHFIELD: You don't think it's a question? I think it's a question.

MR. WELCH: Okay, it's -- it's definitely an issue we posed --

MS. BURCHFIELD: It's a question for me.

MR. WELCH: -- we can talk about it.

MS. MOLLOY: Does that cover it?

MR. CLARY: Don Clary, representative of Shoshone-Paiute. I just want to get a point of order of clarification with regard to we are having the -- the workshop tomorrow, so to the extent the tribal issues are on this agenda for right now, I just wanted to clarify to what extent, and particularly when -- the fact that not all our representatives are here at this point in time, how far do we want to go with regard to those issues and what would be appropriate?

MR. WELCH: Okay.

MR. CLARY: Because we may have some additional issues which we're not raising at this point in time on the expectation that's going to be addressed tomorrow.

MR. WELCH: Okay.

MR. CLARY: If that's not appropriate, let us know.

MR. WELCH: Well, we will -- I think what we're interested in is -- is hearing things about tribal issues from -- from other participants in the process, but, Don or Greg or -- feel free to speak up when -- and maybe we can take note of some of these and bring them into the meeting tomorrow, as well. It might be very helpful. Brett.

MS. SWIFT: Brett Swift of American Rivers. I would also add, I don't know if it's up there, study criteria.

MS. MOLLOY: Yes, it's up there.

MR. WELCH: It's up there.

MS. SWIFT: And then the other is clarification on the burden to be met when you're requesting studies at different parts of the process.

MR. WELCH: Okay.

MR. BLAIR: Tim, we have three more in

the audience.

MS. KLATT: And mine is just simply --
oh, I think it's there, cooperating with agencies and --
and intervenors. You've been scrolling back and forth and
I hadn't seen it, so that --

MR. WELCH: Hari.

MR. MODI: Hari Modi, M-O-D-I. I
wanted to find out about the -- the application process
time. We talk about 16 months now and I think we need to
talk about as to what is going to be the procedure and
process if we were to go beyond the 28 -- 16-month time
period. And also, should there be some conversation about
changing the process in the meantime?

MR. WELCH: Did you get that, Liz?

MR. PERNELA: Lloyd Pernela of Puget
Sound Energy. The --

MR. BLAIR: Lloyd, Lloyd, restate your
last name.

MR. PERNELA: Pernela, P-E-R-N-E-L-A.
FERC has a number of recitals of excellence, but under the
-- the access to documents, I think there's -- we're
missing one. There's a conflict between the division and
the down safety inspections and their rulings on security
that are coming out with regards to what we have to
disclose in our public documents room, which documents to

make available.

And on -- On the security side, they're saying not to do any of that and we've seen that reflected in the access to documents on requiring a -- so I would just add the words -- when we say access to documents, it's really a security issue that seems -- appears in conflict with what's being required through the whole licensing process.

MR. WELCH: Okay.

MR. CLEMENTS: For those -- Can I just clarify something for people because they may not know? The commission very recently, within the last few weeks, issued a rule on critical energy infrastructure information and the purpose of that rule is to provide the mechanics for entities that need to get information about energy projects that are applied for with the commission.

There's a process for getting that kind of information which might otherwise for security purposes not be available to the public. I can't remember the -- which order number it is, but it came out within the last couple weeks. It -- It is no doubt on our web site so if you're interested in that, that's the place to go.

MR. WELCH: Okay, our list -- our list is -- is growing.

MR. BLAIR: Tim, one -- one -- Polly
has one.

MR. WELCH: Yeah, Polly.

MS. ZEHM: If this is already on, I
apologize --

MR. WELCH: No, it's okay.

MS. ZEHM: -- for coming in late but
we wanted to -- Oh, my name is Polly Zehm, Z-E-H-M, from
Washington State. Application of dispute resolution
decisions to state 401 agencies, a clarification.

MS. MOLLOY: Okay.

MR. WELCH: Applying it to 401 --
Applying it to 401 --

MS. ZEHM: To state 401 agencies.

MR. WELCH: Okay, why don't we -- Why
don't we go through really quickly and just go through the
list and sort of -- I know we've been -- kind of scrolling
up and down here and let's just -- let's just go through
and let's go through our list.

Cooperating agencies, and if -- and if
-- if you put this one up here and you want a little bit
more clarification on it, go ahead and stop me and say,
yeah, and specifically blah, blah, blah.

MS. NALDER: Well, that -- That's what
we wanted to talk about today was there may be a

cooperating agency as well as intervenor.

MR. WELCH: Okay, so it's cooperating agencies, slash, intervenor.

MS. NALDER: Yeah.

MR. WELCH: Okay, contents of the draft license application, studies and cross-resource issues, study requests at different times during the process, study criteria, time period for studies, study status meetings.

You might be able to combine that one with study request. I mean, those two are similar, the study request at different times in the process and the study status theme might be together, sort of.

Timing of the 401 application, timing of the filing of terms and conditions, interim milestones regarding the 401 process. You might be able to put that one with the other 401 questions, too. Dispute resolution, now would this one be dispute resolution in general or the dis -- the proposed study dispute resolution process?

MS. BURCHFIELD: Probably both, don't you think? Stephanie Burchfield. I was -- I -- I think there's probably both issues and -- and one, you know, detail related to the formal dispute resolution process was involved in the non-mandatory participants in the

process.

MR. WELCH: Okay. No pressure, Liz, keep going.

MS. MILES: You may want to put that one up with the other study.

MR. WELCH: Say that again, Ann.

MS. MILES: The study dispute resolution process, might want to put it up with all the other study issues.

MR. WELCH: Yeah, okay. Oh, there it is. Okay, all right, oh, you're right on top of this Liz.

Okay, public participation, tribal issues, little more specific eligible resources, cultural versus historic resources plan and Chairman Wood.

MR. HALLER: You could also add dispute resolution under that, as well.

MR. WELCH: Okay, clarifying -- Or, sorry. Transition provisions, final -- both in regards to the final application filing and the notice of intent. Clarifying roles of commission staff and the position of the proposed tribal liaison.

MS. NALDER: That goes up with tribal issues; doesn't it?

MR. WELCH: Yeah.

MS. MOLLOY: That's kind of --

MS. MILES: That should be two
separate issues.

MR. WELCH: Yeah, availability of FERC
staff, that -- Yeah, that's sort of -- sort of separate, I
guess. Some of these are going to mesh in together here.
There you go. Time out for -- whoa.

MS. MOLLOY: Sorry, oops.

MR. WELCH: Time out for settlement
negotiations, slippage of time lines in the process, small
projects, accountability mechanisms, access to documents
in regards to security issue and how that might conflict,
multiple use of projects, multiple use of a project,
what's -- what's the interaction between that and the
process, amendment applications, process selection
criteria, changes to the traditional licensing process,
coordinating with state SEPA, time frames, is that the
same, coordinating with state SEPA time frames or time
frames?

MS. MOLLOY: I think time frames was a
separate --

MR. WELCH: Okay. Change of the
process -- change of the process during the process. Did
somebody want to say more about that? We'll see what --
okay, thank you, Liz.

All right, wow, okay, we got -- we got

a lot here. Does anybody -- Now that you've, sort of, seen the whole list, maybe you've made a mental note of something that -- something else you'd like to see on here. Open this up to everybody. Mark.

MR. BAGDOVIDZ: A better definition of what constitutes mandatory conditioning authority.

THE COURT REPORTER: Just one more time.

MR. BAGDOVIDZ: Mark Bagdovidz, U.S. Fish and Wildlife Service. Definition of what is a mandatory conditioning authority.

MR. CLEMENTS: Is that really a process issue?

MR. WELCH: It might be. It might be.

MR. CLEMENTS: It sounds like a legal memo.

MR. BAGDOVIDZ: But -- But throughout the document, you see mention of existing authorities or at least other things, and some people say, hey, well -- well, wait a minute, who -- who falls under the category, in other words, cooperating agency status or this pre-resolution?

They all are linked to -- in some ways to mandatory conditioning authority but I think it's not clear as to what that is. It basically may be a matter of

putting it down into what FERC thinks it is and say here's what we mean by that.

MR. WELCH: I -- I -- Was it what you and I were talking about during the break?

MR. BAGDOVIDZ: Yes.

MR. WELCH: It -- It -- Trust me.

MR. CLEMENTS: Why now after all these years?

MR. WELCH: Anything else? Okay, Hari, one more.

MR. MODI: Hari Modi, again. I don't think anywhere in the document it clearly states that this process is going to be applicable for relicensing, as well, and if there are going to be any distinct changes with respect to the process. Maybe we should identify.

MR. WELCH: So changes in regard to original --

MR. MODI: Relicensing.

MR. WELCH: Original licensing?

MR. MODI: Relicensing.

MS. MILES: Let me just make it clear. It does apply to relicensing. The way it's conceived right now, it applies to original licenses and relicensing.

MR. MODI: Okay, in the document?

MS. MILES: Yes.

MR. MODI: Okay.

MR. WELCH: Okay, voting time. Unlike other democratic processes, you get to vote as many times as you want for as many issues as you want. Try not to vote for every single one of them, but -- so maybe think about in your mind right now maybe -- maybe your top three or something like that and go ahead and vote for those.

MR. CLEMENTS: Tim, you want to clarify specifically what they're voting on?

MR. WELCH: Okay, we are voting on prioritization. The top vote getter will be the first topic that we discuss and the one with the least votes will be discussed at 4:30.

MS. MILES: Or perhaps not at all. There's a lot of things up there, so --

MR. WELCH: Perhaps not at all. Yeah, Greg.

MR. CARRINGTON: Just an idea, what do you think about grouping the study issues all in one category as opposed to going through and voting on -- Greg Carrington.

MR. WELCH: Okay.

MR. CARRINGTON: I think studies seems to be an overarching theme here. If we can just put those

all in one category.

MR. WELCH: Like these three right here?

MR. CARRINGTON: Yeah, there's a whole bunch of 'em actually.

MS. MOLLOY: There's also time period.

MR. WELCH: Yeah, if -- if there's any other -- we tried to mesh them down a little bit but that -- that's a good point.

MS. MOLLOY: And time period?

MR. WELCH: Yeah. All right, now that you've thought about it, how you're going to use your votes, let's go to the top, cooperating agencies/intervenors, 13 -- 14. Draft application contents, put your hands up high.

MS. JANOPPAUL: Tim.

MR. WELCH: Mona, yeah.

MS. JANOPPAUL: I'd like to -- to say something about that first issue. There -- There's a number of issues that seem to create a good deal of angst and -- and I would -- I was -- I'm really surprised so -- so let me -- let me say a couple of things for --

MR. WELCH: Well, Mona, can we -- can we sort of maybe vote on these and then when we come back to it, you know, feel free to kind of discuss 'em and say

-- you know, clarify and that kind of stuff. I'd like to, kind of, get this, kind of, rolling because people --

MS. JANOPAUL: Go right ahead. Go right ahead.

MR. WELCH: Okay. Draft application contents, put your hands up high. Late vote from Bob, 10.

MR. BLAIR: Tim, 13.

MR. WELCH: Okay, 13. Okay, studies, I knew it. Okay, yeah, who doesn't want to talk -- that's good. Who doesn't want to talk about studies? Yeah, that's what I thought. Just put 50. Okay, all right, is this one in studies or is this one separate? Okay.

MS. MOLLOY: It can be in. It can be --

MR. WELCH: I think this is --

MS. MILES: Let's do the dispute resolution process separately.

MR. WELCH: Okay, dispute resolution process, 17. Thank you, Nolan, 17. Timing of the 401 application, no campaigning, ten -- ten.

Timing of terms and conditions, you're committed, one, two, three, four, five, six, seven, eight -- eight. The application of the dispute resolution process to the state 401 agencies.

MS. MOLLOY: I'd probably move this

up.

MR. WELCH: Move that to --

MS. MOLLOY: -- timing of application,
dispute resolution, resolution process.

MR. WELCH: The one with 17, okay.

MS. MOLLOY: Oh, sorry, sorry, sorry.

It's the pressure. It's --

MR. WELCH: She's cracking. She's
cracking. All right, public participation, two -- three
--

UNIDENTIFIED SPEAKER: What does it
mean --

MR. WELCH: Four.

UNIDENTIFIED SPEAKER: How do you --
How do you keep involved --

MS. MOLLOY: How do --

MR. WELCH: How do you -- How do you
keep stakeholders from, sort of, the public sector? How
do you keep engaged throughout the process?

MS. NALDER: No, it's studies of
guidelines for public participation so that small groups
of people in communities can't hijack the entire process,
putting up some sort of a -- a measure understanding --

MR. GROZNIK: You just hijacked my
issue. This is Frank Groznik. This was my issue

concerning public participation and how do you keep people effectively involved throughout the whole long process.

So talking about hijacking issues, that's what just happened.

MS. NALDER: Frank, I brought it up under the other topic, too.

MR. WELCH: Okay, maybe -- maybe it's two -- maybe it's two things.

MR. GROZNIK: Dispute resolution.

MR. WELCH: I'm losing control. I'm losing control.

MR. BLAIR: Take the vote again, Tim.

MR. WELCH: All right, go ahead, vote -- vote on this one again. One, two, three, okay, great.

MS. MOLLOY: Hold on. I'm still dealing with issues that --

MR. WELCH: Okay, tribal -- tribal issues.

MS. JANOPPAUL: I'm sorry, clarification on the last one. Who's you, the licensee? Who's -- Who's you?

MR. WELCH: I think you is being sort of in the general sense of process participants.

MR. CLEMENTS: It's you as in we.

MS. MOLLOY: Can you -- Can you --

How's this, Mona?

MR. WELCH: How to keep participation continuous and effective? Okay, tribal issues, one, two, three, four, five, six, seven, okay. Transition provisions, oh, come on. It's got to get at least one vote, Steve, one, two, three, four, five.

Clarifying the role of -- of commission staff and the availability of FERC staff, one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, oh, boy. Okay, time out for settlement negotiations. You can't vote.

UNIDENTIFIED SPEAKER: What does it mean?

MR. WELCH: Hang on, I'm counting, one, two -- ten, 11, 12, 13, 14. I'm assuming this one means if there's a possibility for a settlement that we would take time out from the proceeding for an express period of time to allow those negotiations to take place; is that what -- is that accurate?

MS. SWIFT: I didn't -- I didn't raise that one, but I was wondering if we could actually make it a little broader than just time out, kind of how to accommodate settlement negotiations. Sorry, Brett Swift. I was wondering if we could make it broader. I think Kristen raised it -- to -- to more accommodating

settlement negotiations rather than just -- just time out.

MR. WELCH: Okay, we have to vote again.

MR. BLAIR: Yeah.

MR. WELCH: Okay, new vote, okay.

Sort of been broadened a little bit, accommodating settlement negotiations including a time out provision, go, 23. Slippage of time lines in the process, ten.

Small projects, two. One, two, three -- three. Accountability mechanisms, four. Access to documents, I got five. Multiple project use, one, two, three, Pam, four -- four. Amendments, how it applies to amendments, Mark, one, two, three, four -- four. Process selection criteria in the process. We didn't do this one already?

MS. MOLLOY: No, but I think we have one that -- that would go with it. This one should go with it, maybe.

MR. WELCH: No, that's kind of a change.

MS. MOLLOY: No?

MR. WELCH: I don't know. Okay, process selection criteria, 12. Changes to -- to the traditional process, it's got to get one. It's over -- Mona, one, two.

Coordinating with state SEPA's, state people, ten. And time frames, should there be any? Time frames, one, two, three, four -- eight. Change of the process during the process, Hari, one -- one, okay.

MS. MOLLOY: One?

MR. WELCH: Yeah. Definition of mandatory conditioning authority, one, two, three, four -- four.

MS. MOLLOY: And that's it.

MR. WELCH: Oh, well, let's ask the group. What we can do here is we can take an early lunch now and that will give us some time to jumble these all by order so they're all ready, or if the group prefers we can just sort of scroll up and down and figure it out and -- and start. Right now, it is 11:35 so we would probably convene again -- what do we have? Do we have an hour?

UNIDENTIFIED SPEAKER: The first -- We know the first couple.

MR. WELCH: We certainly do; don't we?

UNIDENTIFIED SPEAKER: Yeah, we don't need to argue about which ones are seventh and eighth.

MR. WELCH: Right, so maybe we should -- could start talking about studies, like, right off the bat and we'll -- we could take that until -- until -- well, we could start it anyway. We got 25 minutes 'til

noon, so should we go -- should we start on studies and go until noon and take a break, see where we are?

MR. CLEMENTS: It probably wouldn't be a bad thing to do that, Tim, because I think we'll need to spend a little bit of time at least articulating more specific study questions so that we can discuss them rationally.

MR. WELCH: Okay. So I'm going to go ahead and -- we're going to go ahead and talk about studies right now while Liz sort of reorganizes --

UNIDENTIFIED SPEAKER: -- cutting it off.

MR. WELCH: What's that?

UNIDENTIFIED SPEAKER: You're going to end up cutting it off.

MR. WELCH: Well, we -- we could -- we could continue -- I mean, I'm not saying that this -- you know, at noon is the end of studies. We could -- we could pick it up again or we could go to 12:30. Let's -- Let's see where we are at 12:00.

Okay, put your scroll up to the studies. Okay, there are a lot of -- we have a lot of things under studies. We've got Nan's issue about cross-resource issues, study requests at different times during the process, the study status meetings that are

proposed, study criteria themselves, Keith had some stuff about that, and the time periods for studies. So who wants to begin?

MR. CLEMENTS: Tim, maybe we should break those, just put a -- you know, list them separately and do just a quick little vote on each one of those. That way we'll have a priority for those four or five different things.

MR. WELCH: More voting?

MR. CLEMENTS: Yeah, but if it's --

MS. MOLLOY: So much fun the first time.

MR. WELCH: Okay.

MR. CLEMENTS: Then we can actually get to the substance.

MR. WELCH: Okay. Okay, so we're going to vote again just within studies, so we have studies and cross-resource issues, two. Study requests at different times in the process, one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15.

The study status meetings, one, two, three, four, five, six. The study criteria, beautiful, number one. Just put it first. Time periods for studies, 20. Okay, okay, let's start off with the study criteria. The study criteria are -- are proposed in part five. Help

me out here, John, section --

MR. CLEMENTS: Hang on a second, five point --

MR. WELCH: 5.10, beginning on page D60 but most of it is on page D61. It'll be under -- under B, contents of study request, any information or study request must -- and it gives a series of seven issues. Keith, did you -- you had -- you had some things specifically about that that you wanted to discuss.

MR. HALLER: Can you give that citation again?

MR. WELCH: Yes, we're on page D61 of the yellow book in -- in the -- in the red line strike out text under -- it would be attachment D. It's under small letter -- under B. It says content of study request, any information or study request must -- and it gives a list of seven points.

Would the group like me to read those off? I see a couple nods. Okay, describe the goals and objectives of the study and the information to be obtained. If applicable, explain the relevant resource management goals of the agencies or tribes with jurisdiction over the resource to be studied.

Number three, if the requester is not a resource agency, explain any relevant public interest

considerations in regard to the proposed study.

Number four, describe existing information concerning the subject of the study proposal and the need for additional information.

Five, explain any nexus between project operations and effects, whether direct, indirect or cumulative on the resources to be studied.

Number six, explain how any proposed study methodology including preferred data collection and analysis techniques or objectively quantified information, and a schedule for -- including field seasons and the duration is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge.

And number seven, describe the considerations of cost and practicality and why any proposed alternatives would not be sufficient to meet the -- the stated information needs. Okay.

MS. NALDER: Nan Nalder, I think you can put the concept of cross-resource into that criteria.

MR. WELCH: And -- and how -- how would that -- how would that be?

MS. NALDER: You -- You got the nexus between project operation and effects. I -- I think that in the study thing you also need to consider the nexus

between the resources being studied and the -- I don't --
I -- I could come up with some words a little bit later
but --

MR. WELCH: Okay.

MS. NALDER: -- that's kind of what I
was getting at.

MR. WELCH: How it relates to other
aspects of the project?

MS. NALDER: Yeah, how it relates to
other --

MR. WELCH: -- non-power purposes.

MS. NALDER: Non-power, and -- and
also how the studies integrate. There -- There are two
things here, yeah.

MR. WELCH: Okay. Stephanie.

MS. BURCHFIELD: Stephanie Burchfield,
I think I -- I know that you might be able to get this out
of this list, but what seems really important to me is to
explain why this might be needed to determine if
mitigation measures are -- are necessary, or it might be a
study that's needed to determine which -- whether a
mitigation measure is going to be effective or not, such
as which -- what kind of screen do you want to put in? Do
you need a screen? So I -- I think that it's just not,
you know, relevant resource management goals and a nexus,

yeah, we can easily get to that, but I think that if it's a study that's needed to get that information to prescribe a mandatory condition or recommend a 10J condition, we ought to be able to seek that kind of study.

MR. WELCH: Anybody on the panel?

MR. CLEMENTS: I -- I thought our intent there was that you would kind of -- you would be articulating those kind of things when you make the study request; that you would say, you know, this is why we need this study of this kind of fish screen or this kind of ladder or, you know, whatever it is that is the -- the area of concern.

Just sort of as a -- a bit of background for this. These didn't just spring out of the ether. They -- They have a history. They were precursors to these criteria developed by the interagency task force, which was a -- was it all federal?

There was an interagency, mostly federal, I gather, task force that talked about these kinds of things, and then there was also the interagency hydropower committee, which was the commission staff and federal agency staff, who, you know, sort of refined these as they came out.

And then when we had the public drafting sections back in October, these study criteria

were -- were chewed over by that group as well and recommendations were made there for modifications, so there's -- there's been actually quite a bit of looking at these, but, you know, your fresh eyes are -- are what we need here.

MR. WELCH: I'm lost, John, oh --

MS. BLAIR: I have a question. It's related to --

MR. WELCH: Your -- Your microphone's not on.

MS. BLAIR: Question related to existing --

MR. CLEMENTS: And your name, please.

MS. BLAIR: Oh, I'm Jane Blair with the Bureau of Reclamation, and if it's a new project being replaced in the existing dam, do studies related to the -- evaluating the impacts of the operations of that hydropower plant on the dam, do they come under this category? And if they do, do -- do they become a part of the NEPA process? And if they do, then I think they're going to have issues on security and, you know, public access to those documents.

MR. WELCH: I'm sorry, I didn't -- I don't think I quite understood.

MS. BLAIR: If somebody comes in and

wants to put a dam at one of our -- I mean, put a power plant at one of our dams, we require them to do studies and they're related to evaluating if that power plant is going to impact the structural integrity of the dam. And would we have to request those studies at this time in the process?

I don't think we've ever done that before. It's always been after the license has been issued, and I think we might have concern if we had to bring 'em into this process because then you'd be bringing it into the public eye.

MR. CLEMENTS: You know, I would think that we would actually want those issues to be addressed because if someone was proposing something that would affect the structural integrity of the dam, we'd sort of want to know that right up front. It might make the whole thing a non-starter, if, for one, it could save everybody a lot of work if it -- if that turned out to be the case.

As far as the -- I guess the homeland security concerns, to -- to put it bluntly, I don't think we're probably in a very good position to address that and at least one thing that's going to come out of this is I'm going to go back and look at the CEII rule in great detail when I get back so that as we go through the series of workshops we can speak more intelligently about the

implications of that from a licensing process, but I don't think there's any intent to make -- to get -- inadvertently make public data that would otherwise necessarily want to be -- you know, want non-public, but there is a tension there, yeah.

MS. BLAIR: The types of studies and the outcomes of those studies are not normally show stoppers, I don't think, because there are normally technical things you can do.

MR. CLEMENTS: Yeah, I mean, it -- it strikes me that we could or you could or somebody could require the applicant or potential applicant to do studies of that nature but make the results non-public, you know, on that -- on a national security basis without prejudicing the environmental analysis, necessarily. I would think we kind of have to look at it on a case-by-case basis.

MS. BLAIR: Could we potentially be precluded for asking for those studies after the license has been issued?

MS. MILES: You know, I think what you're finding is that we haven't recently worked on one of these and I can -- I can't -- I was trying to remember what the timing was and what the particular issues around doing the -- what you're asking for, and I know we have a

memorandum of agreement with the Bureau of Reclamation on dealing with some things, so I think we have to -- I don't think the intent here is to do anything different than, you know, if you've got certain things ironed out with us about how you work through projects at Bureau of Rec dams, but I think we need to look into it.

MS. BLAIR: It's not just the Bureau.

It's the Corps and other agencies.

MS. JANOPPAUL: I'd just like -- I'd just like to go back to Stephanie's comments. You know, I -- I really thought this was the most open FERC rulemaking I have ever been in with loads of opportunities for meetings and comments. I think this is a great opportunity because of the exchange. But if you have some specific language or some ideas, please, please send them in your comments and the sooner the better because, I guess, we're going to start drafting soon.

MS. BURCHFIELD: Comments are due April 21st.

MS. JANOPPAUL: They are, so -- so -- so language -- language would be really welcome or come to the stakeholder meetings in hell week, hydro hell week.

MR. WELCH: Yeah. Mark.

MR. BAGDOVIDZ: Mark Bagdovidz, U.S. Fish and Wildlife Service. Just for my own clarification,

these study criteria are the study criteria that anyone would have to -- to -- to use in the pre-filing consultation process to propose to the applicant as to why they need a particular study, so whether it's an agency or the public, they would have to do this. And that's also the criteria that the commission staff uses when they ask for additional information. They all go through the same thing.

And -- And also, it's used again if we have a dispute resolution process. That panel of three people would also look at these three things, so this -- so these criteria are, although they're not new, certainly they -- they just got a little more broadly used in terms of -- okay, thank you.

MS. JANOPPAUL: There's -- John mentioned earlier, you know, this -- this is for this new ILP process. You know, our agency's interior commerce agriculture signed an agreement with FERC -- signed about seven or eight agreements with FERC as to what criteria we would provide for study requests, so if you want to look at those, if you're -- if you're looking -- still looking down at a TLP or even an ALP, go look at the ITF agreements about what criteria we agreed we would need as federal agencies.

And there's also for -- you know, you

can go look at the, what is it, 4.32B, the -- for the existing criteria for additional study requests and pair those with these, and if -- if you have some -- some further thoughts because -- because we've been sitting there with those two or three sets and -- and our own experiences and our own field to come up with these.

MR. WELCH: Way in the back.

MR. MARTIN: John Martin, B.L.M. When I looked at these criteria here, looking down the list, it really looks like a description of what you would present as far as the studies and stuff but it doesn't really give you the criteria.

How do you determine whether that is a -- a responsible or reliable type of study that would need to be done? And who would actually do that?

That's the other aspect of this because there are times when companies say, no, we don't need that study. The agencies say, yes, we do. And agencies have different needs for what the study results will do rather than what the company will -- what are needed for, so the determination of actually what study is actually done is really not described here. It only describes what information you need to -- to put into the study request, why -- you know, why you need the study, so on and so forth, but it doesn't answer the criteria to

determine whether that study is a -- is a necessary one or not and then who does it.

MR. WELCH: John.

MR. CLEMENTS: The -- The idea here is that the -- the general focus of this is to obtain study information that's necessary for the agencies that have a statutory responsibility, like the commission or agency with mandatory conditioning authority to do what they need to do to have an adequate evidentiary record to do their job.

And that's the focus of where you're trying to get with this, so when -- when the requester addresses these things, then a decision will be made as to the specifics of whether a study is necessary in that preliminary determination, or, if necessary, after the formal dispute resolution. So the -- the mechanism when the preliminary determination is issued, that's going to be an order from the director of the office to the potential applicant to do those studies.

MR. WELCH: Pam.

MS. KLATT: I just -- There's a study plan requirement in the pre-application document, and I just want to know if the same criteria for -- applies to those studies as applies to the study request.

MR. CLEMENTS: Did you tell us where

you were looking at? I'm --

MS. KLATT: Actually, I'm on D60 and at the very bottom of section or paragraph 5.9 it says the applicant's proposed study plan in an appendix, and I'm wondering if that study plan will -- each study will follow the same format as that required for another party study request, if -- if the applicant needs to describe the goals and objectives and --

MS. MILES: Pam, if you look at section 5.8, the one previous to that, that is the applicant's proposed study plan and it's got the same criteria listed in it.

MS. KLATT: Okay.

MS. MILES: So that -- that is the intent, yes.

MR. WELCH: Yes, I'm sorry, I should have -- I should have pointed that out. It's very -- It's very similar criteria but it's written from an applicant perspective as opposed to a resource agency study requester. Nolan.

MR. SHISHIDO: Yeah, Nolan Shishido, Department of Interior, S-H-I-S-H-I-D-O.

I -- I just had a couple questions that I'd like to have clarified, if -- if I could. Maybe I should have asked them earlier this morning, but as I

understand it, the study plan would be approved by the commission.

Is it -- The approval, is that going to be based on the contents of the study request or are there other standards that the commission would use? I'm particularly interested in -- in how the commission would look at an agency request that would have mandatory conditioning authority.

And -- And actually, I have a second question of clarification, and -- and that is whether the study dispute resolution process is limited only to agencies with mandatory conditioning authority, that is the applicant and other entities would not be able to use the dispute resolution process.

MR. CLEMENTS: I'll do the second one first. The answer is -- is yes, the eligibility to use the formal dispute resolution process is limited to federal -- pardon me -- federal or state agencies or Indian tribes with mandatory conditioning authority.

There is provision in there for the applicant to participate in the form of being able to submit information for the record, but they -- the applicant does not have the eligibility to initiate a dispute resolution proceeding. And the reason the applicant gets to put its two cents in there whereas other

people don't is the applicant, of course, has to live with the outcome in terms of doing the studies that are required, so they have a -- a very specific and -- and substantial interest in that.

MR. SHISHIDO: A -- A quick response to that is -- is that in the record upon which these folks would be making that determination would be the study request and the applicant's response, I -- I would think, and one -- one thing, it -- it strikes me that if these three people are supposed to be people that don't know anything about the specific project, then there might be consideration given to additional information from the part -- the other party that might have a dispute over -- over the study request.

MS. JANOPPAUL: There -- There's -- As it was envisioned, there's nothing that precludes the other parties. It just specifically -- for some reason the way the commission drafted it, it specifically allows the applicant that opportunity, but we had a lot of discussions about this, about, you know, availability, the entire record, looking at all -- what all parties have filed.

Certainly the opportunity for --
Although there -- there is terrible time constraints, you know, the opportunity for public meetings, site visits, I

mean, we discussed all these things and there was travel time, cost considerations.

Also, something that -- that, you know, doesn't seem to be really acknowledged outside the D.C. area is the mail issue into D.C., and I -- I cannot stress that strongly enough. Since 9/11 and particularly in the last few months with blizzards and orange alerts, we are just not getting anything earlier than a month or so in regular mail, so -- so, I mean, you have to take into consideration all those things.

But we -- But I -- I -- I don't know why, somebody -- somebody can explain, but we -- we certainly discussed the opportunity for all participants who had an interest in that particular study to submit additional -- additional information or whatever to the group, but we wanted to rely mostly on the record.

Now if you don't like that, tell us now and -- or -- or else submit comments and we'll rework that, because it is all still open.

MR. SHISHIDO: Thank you. And I had that first part of the question.

MR. CLEMENTS: Let me do -- just another clarification. You were -- Because you were talking about is the only thing that the decision is based on going to be the request, and -- and the answer is no.

There's going to be -- first, it's going to start, as you know, with the preliminary application document, and then there's going to be the applicant's proposed study plan.

There's going to be a scoping document. There's going to be a study plan meeting. There's going to be comments on the study requests.

And if the applicant -- the applicant's going to submit a revised study plan and if it doesn't agree with the study request, it's going to have to address that matter and it's going to have to address that matter with respect to the criteria.

So there's going to be quite a record built up on which the panel could base its recommendation before the formal dispute resolution is even filed and that formal record should also include any comments with respect to that study or related kinds of study requests other entities have made, so there should be, we hope, a wealth of information on which the -- the panel could make a recommendation.

MR. SHISHIDO: That -- That first question was on what basis would the commission make its initial determination particularly where there was a -- a mandatory conditioning authority type study requested?

MS. JANOPPAUL: Nolan, that's in -- on page D63 at K at the bottom and it basically says the

director's decision will be based in reference to the --
the study criteria and the recommendation of the panel and
any applicable law or commission policies and practices.

MS. MILES: Are you talking about the
dispute resolution process?

MR. SHISHIDO: Actually, I was talking
about the initial determination of the study plan.

MS. MILES: Okay, well --

MR. CLEMENTS: I -- I don't think the
rules there are any different for forwarding agency as
opposed to someone making a 10J kind of early and standard
request.

MR. WELCH: Okay. It's -- It's -- I
just want to remind you, it's 12 o'clock. I can go and
keep going with this discussion or this time period on
study criteria.

MS. BURCHFIELD: Can I just put out
two more ideas?

MR. WELCH: I -- I see a couple head
nos but Stephanie sort of has the microphone.

MS. BURCHFIELD: Yeah, I'm here.

MR. WELCH: So let's -- let's go ahead
with Stephanie's question, get that wrapped up, and then
let's go ahead and break for lunch.

MS. BURCHFIELD: Stephanie Burchfield,

I -- there were a couple of other thoughts I had about study criteria. One was explain how the study will provide statistically reliable information. I know you get at it a little bit in here. I think it's number six, but I don't think it's as clear as we'd like.

I think you also might want them to explain what previous studies have been conducted at the project and why this study is needed to, you know, give that kind of information. I actually thought that idea about previous studies that were conducted should take part of the -- whatever we called that initial application document. I don't see that in the list of things that are required in that document. It really helps us to have a summary of existing information specific to that project.

MR. WELCH: I would think that would be number four; would you not?

MS. BURCHFIELD: Yeah, no, I mean --

MR. WELCH: Oh, okay.

MS. BURCHFIELD: -- if NEPA provides -- I think it's a pre-application document. If you look at what it says, fish and wildlife and wildlife and botanical resources, D53, it doesn't seem to me that it -- it asks someone to -- a lot of projects say they want the study done -- conducted.

MS. MILES: Yeah, Stephanie, that's a

good idea. We actually did have conversations about that, that that was a really critical thing that had happened early that all the existing information both something -- anything the applicants might have and anything that agencies or others might have.

You lay it on the table so we at least know where we're starting from, and I know we -- we put it in the scoping meeting, that that would be a part of the scoping meeting, a discussion of that. If it's not back in the pre-application document --

MR. CLEMENTS: I think it's also --

MS. MILES: -- then we need to get it in there.

MR. CLEMENTS: If you look at the bottom of page D51 under G, there is supposed to be a discussion in the -- in the pre-application document of existing studies, so if that does it for you, that's good. If -- If you want more --

MS. BURCHFIELD: We want more but that's -- that's a good start.

MS. MILES: Give us the language. You know, when you file your comments, you can refer to the specific spots and specific language.

MR. WELCH: John.

MR. BLAIR: Tim, after the break,

we'll have approximately three hours this afternoon. We have about eight high priority issues so the group may want to think about time allocation for this afternoon.

MR. WELCH: Okay. Well, let's give everyone at least an hour for lunch, so why don't we reconvene at five minutes after 1:00. Thanks, everybody.

(Whereupon, a lunch recess was taken.)

MR. WELCH: Okay, now before lunch we were talking about the -- the study criteria that's found on page, what was it again, D60 -- D60 and 61. Hopefully, many of you have been able to think a little bit more about our -- our key issues over lunch and -- and hopefully you maybe have even had some conversations with some other folks about them.

So let's -- let us go ahead and continue talking a little bit about the study criteria. I know that -- I'm not quite sure we -- we came to complete closure on that so if there's anything -- any comments anybody wants to make about the study criteria, please go ahead and feel free.

MR. BLAIR: Pam Klatt.

MS. KLATT: On criteria number six, it's discussing the study methodology and it says -- it says that the study plan or the study methodology should be consistent with generally accepted practices in the

scientific community or as appropriate relevant tribal values and knowledge, and I'm wondering if somebody can explain that to me.

MR. CLEMENTS: I guess it's me.

That's one of those ones that evolved. When -- Originally, when we were talking about what we wanted there, it was kind of focused on resource agencies and what they would need. And then as we got to the -- the public drafting sessions last fall, people were looking at the criteria and they said, well, gee, people might study requests that are related to things like recreation or there might be, you know, cultural resources issues where people want studies done or information gathered and your criteria don't really address that very well.

So that's how we came up with the relevant tribal values and knowledge. People wanted to have the -- the interests of, you know, tribes reflected there.

MS. KLATT: But wouldn't there still be a methodology of how you were going to get at that information?

MR. CLEMENTS: Well, I -- I would think for some there wouldn't be a -- you know, a methodology that's accepted in the -- the scientific community because it's not really directed at that -- that

kind of thing. The idea was to make sure, more here, that we were being inclusive in terms of explaining if you had a study request it might -- it might not be, like, a fisheries thing. It might be something else. And we wanted to make sure that there was some kind of criteria in there that ought to be addressed with respect to that.

MS. KLATT: So you'd still have a methodology, just maybe not as scientific?

MR. CLEMENTS: Yeah, there will be things -- you know, anytime you've got some kind of a -- a study proposal or a study request, you -- you need to explain how it is you would go about doing it, so that would probably satisfy that.

MR. WELCH: Ann, did you want to say something?

MS. MILES: No.

MR. WELCH: Keith.

MR. KIRKENDALL: On -- This is Keith Kirkendall with National Marine Fishery Service. I'm from outside the beltway. They haven't retrained me yet.

The criteria number seven, I guess I'm looking at it and trying to understand what it means for cost and practicality. And I see some -- some big issues there. It's not unusual to have a lot of discussion around the cost of studies and whether there commiserate with the

project impacts or they're too expensive and a lot of projects don't have good studies. There's a lot of big information you have to try to get at these studies so I -- I would really like to hear what -- what seven is driving at, I mean, the cost and practicality because I -- I see that really being used to jam agencies when they're trying to get the information they need.

MR. CLEMENTS: Do you want to jump on that?

MS. JANOPPAUL: Sure. As -- As among many things, this was a very contentious criteria or criterion when discussed between the -- even among the resource agencies.

One agency in particular, one department, strongly supported this, whereas maybe the others were not supporting or opposed. This is what we came up with and we hoped it addressed the concerns that you just voiced because if you don't have any considerations, then you don't have to describe them, or if you haven't done any cost -- any considerations of cost, this at least gives you the opportunity to say that we don't have any information about it.

But there -- there was a particular concern that congress was looking for this kind of information, if you look at any of the energy bills. They

-- You know, congress and the administration, the national energy plant, have been using language like this. So this was pretty carefully crafted, but we're certainly open to redrafting it.

But -- But I will -- I will tell you there were a number -- number of us on the drafting committee that -- and the resource agencies that didn't support this but this seemed to be about as far as we could go. It -- It doesn't really require that you consider cost, but it says if you do consider them, describe those considerations.

So if you have input, Kerry is the guy that you should lean on if you are -- if you are with NOAA Fish or maybe you're submitting your comments separately. I don't know how your department is handling this, but in -- in general, that's how it was come up with. I don't know if Kerry has any additions or -- John is giving me that look.

MR. KIRKENDALL: I thought it did require the requester to address costs but Mona is saying it -- it doesn't so -- so maybe some more comment on this would be helpful.

MS. MILES: It -- It is -- We did ask for comments on this one in particular because we had -- I believe it was the National Hydropower Association gave us

other language that they wanted for considering costs and we asked specifically about those two options. There may be others that you want to throw on the table.

MR. WELCH: Ted.

MR. HOWARD: Ted Howard, Shoshone-Paiute tribes. Going back to the question this lady asked about the studies and -- and relevant tribal values and knowledge. When we went through this wording in D.C., what we were driving at is tribes. As many times that these studies that are done, especially in regard to cost or resources, etc., are done from the archeological standpoint alone and it is not inclusive of native American beliefs and cultures.

So the point we made is that it was important to include anthropology and geographic work as well that would include the -- the traditional values and -- and cultures of native American tribes. I just -- I just thought you must have sort of forgotten the wording on that. It's been a while. Thanks.

MR. CLEMENTS: No, I -- Actually, I thought I explained it correctly, but there's -- there's actually a distinction there. If you look over at page D60 and you look up at the -- the parallel to this in 5.8 for the applicant's study plan, it refers to consideration of any known tribal interests, which is different from

tribal values and knowledge.

And the reason for that distinction is that our -- our thinking was that at the point where an applicant is putting together its initial study plan it probably doesn't have any knowledge of tribal values and knowledge; that it, you know, it has sort of whatever general understanding the public might have, or maybe some more, but it -- it would be presumptuous to -- to think of the applicant as understanding tribal values and knowledge.

And this process that you go through would help them to develop that, and the study requests from tribes, hopefully, will explain, you know, tribal values and knowledge in a way that makes the applicant and -- and other folks understand what it is they're getting at that may not be there and it'll help us get to a -- a better decision in the end.

MR. GROZNIK: Frank Groznik, staying with item six, the -- I guess I want to know if there's a distinction between other legislation, other rules talking about the best available science and this talking about acceptable practice in the scientific community. Is there really a difference that you're talking about?

MS. MILES: Frank, what was the first one?

MR. GROZNIK: In -- In item six.

MS. MILES: On which page, D61?

MR. GROZNIK: D61, yeah, in the --

MS. MILES: Okay.

MR. GROZNIK: -- content of studies.

It says explain how any proposed study methodology includes appropriate field seasons as consistent with generally accepted practices in the scientific community.

MS. JANOPAUL: Oh, okay. The -- the best available science issue that -- that you're referring to, I -- I myself would think would be better covered under the criterion that goes to existing information. You know, why existing information is not sufficient. Why the best available science you have now is not sufficient.

But we're -- if we're talking about providing a study methodology, I just don't see how that fits with the word best available science. It's -- It's -- It's a methodology that is generally accepted in whatever community that it's used in. I --

MR. GROZNIK: Well, I guess a subtle difference.

MS. JANOPAUL: I'm just having a tough time putting those two things together. Sorry.

MR. GROZNIK: I guess the subtle difference in my mind is that there's the best available

methodology and then there's the generally accepted methodology, which may be two different levels or maybe different methodology compared to who you're talking to.

MR. GRIFFIN: I just wanted to add that the term best available science was purposefully not used here to avoid confusion with use of the best -- best available science in other context, which -- and the implication there -- it's -- it's usually used in the ESA context.

And -- And what that means is if no science exists or only a tiny bit, that's what you have to use. But in this case, that's definitely not how it works. You need to go out and obtain science. And then I -- I think that's one thing.

And then the other thing I think you were getting at was, you know, best available methodology. And -- And, you know, it's a tricky question because there could -- you know, there -- there can be disagreement and very valid disagreement about which methods are the best. But I think this was designed just to give some sort of context so that if there were a study proposal that, you know, was way out there that didn't use -- that didn't follow established methods, you know, in any way, shape or form, then -- then you could point to this criterion and say, you know, the -- the methodology really doesn't make

any sense.

So I don't know if that helps clarify it at all but we can talk about it more or if anyone else has anything to add.

MR. WELCH: Why don't we -- Why don't we give this maybe another five minutes or so. We have a lot to cover just under studies itself so we'll give it maybe another five minutes or so.

Does anybody else have anything in relation to the study criteria?

MR. HOWARD: Ted Howard, Shoshone-Paiute tribes. I -- Would this be the appropriate time and place to discuss baselines as well?

MR. WELCH: As it relates to the study criteria, Ted?

MR. HOWARD: Exactly, because some of the problems that tribes have had is -- is the baseline that they've established to -- to do a study a lot of times was -- was a very recent baseline.

MR. WELCH: Right.

MR. HOWARD: In regard to tribes, the impact started from the time the dams were placed there so the only acceptable baseline to tribes is the pre-dam baseline.

MR. WELCH: Anything else on the study

criteria? Okay, let's move on to the time period for studies. Recall that in the integrated licensing process, generally it refers to a two-year time period for studies, although we have built in some flexibility in there if there is more time needed for studies that would be built in -- into the study plan, as we all know, that there are projects that maybe require more than two years of study. So does anybody have anything on that? We got 20 votes.

MS. MILES: They all left.

MR. WELCH: That's right. They're all sitting here.

MR. KIRKENDALL: How much flexibility is there for added time?

MS. MILES: What -- What -- You mean if -- if you get to the end, the application needs to be filed and the studies are not complete?

MR. KIRKENDALL: No, I'm saying if two years isn't enough, how much -- how much more time can we add?

MS. MILES: Well, obviously, the application is due two years before it expired so it's going to need to be filed whether the studies are complete or -- or not complete. If --

MR. KIRKENDALL: So you're telling me that the process simply needs to -- to front load these

studies? We -- We know the studies are going to take five.

We need to start earlier?

MS. MILES: Let me finish.

MR. KIRKENDALL: Oh, sorry.

MS. MILES: There is an opportunity on the draft application to comment on -- let me make sure I've got this right before I say it incorrectly.

There will be comments on the second review of studies and comment on the draft application, both of those two. If at that point there is more work that needs to be done that everyone's agreed to as a part of the study plan or someone thinks that something more is needed, you would then state that in a letter.

And there is in here a hurdle of what type of information. We've very carefully crafted this so that you can't sit on it and wait until the end and bring something up. You know, it -- it would be a question of as a result of an anomalous study season or something unusual that came out of the study that you -- there really is something else that you need, then you would go ahead and state that and the applicant then would have the chance to decide, okay, they agree that information does need to be gathered or they disagree and it doesn't.

When they file their application, they would, if they agreed that it does need to be done, put in

a schedule for what they think they need in order to do it. If they disagree and think it doesn't need to be done, then they tell us why.

And then that is followed up with the commission staff taking a look at that and seeing whether they agree or disagree. If -- If the applicant agrees to do it and go forward with it, then, you know, they can go ahead and go forward with it. If there's a disagreement there, then we would take a look at it and if we felt that the information was needed in order for the commission to make a decision, then we would go ahead and ask for that additional information.

MR. WELCH: Go ahead, Keith.

MR. KIRKENDALL: Keith Kirkendall, NOAA Fish, I'll -- I'll just tell you where my heartburn is. The -- A two-year study period in -- in the time up in -- in the Northwest in the last six years, I have never seen a project ever come in under two years. Three is the shortest and we have ones out there that have been going for seven.

So I'm just trying to understand what we're -- what we're trying to achieve here. Because frankly, I don't think the applicants want to get to a -- a position where they're having to file something which triggers us having to put in terms and conditions without

a good admin record in front of us where we have to default back into something like criteria screens or something.

I will tell you that right now there are two different settlement processes that I'm involved in and the applicants when we did that first mark where we could turn in our terms and conditions, they asked us not to because they knew that if we did, what they were going to look like. And it was -- it was going to be really detrimental to moving forward in the settlement process so, I mean, it's -- I'll get off my soapbox but that's -- that's my concern.

MR. BLAIR: Brian.

MR. NORDLUND: Well, Ted, I'm Brian Nordlund from NOAA Fisheries. Keith basically just stated most of what I wanted to say, but I -- I -- indeed, I've seen many processes where you can't extract the needed biological information to develop our mandatory conditions in two years of study. Matter of fact, I can't remember a single case where we could develop the necessary information in two years of study.

So I appreciate what Ann said earlier about, you know, the -- the need for FERC to have necessary information to make their decisions. But there's also a component of that information that we need

to -- to reinforce and -- and make sure our mandatory conditions are solid for the -- for the purposes of incorporating them into the license.

MR. GRIFFIN: This is Kerry Griffin, also with NOAA Fisheries. Yeah, we'd be kidding ourselves if -- if we don't, you know, acknowledge that there's an optics issue here. Congress is -- it's a very visible process. Congress is watching. Pat Wood is watching, the chairman of FERC. And we -- we talked about this at length, you know, through the IEC process and the drafting group. And basically, tried to come up with something that was visually acceptable when you look at a time frame but also flexible enough to knowledge that, yeah, especially with large projects, that they're -- they're not going to -- they're going to require more than two years of studies.

I think the applicants realize that, you know, the biologists realize that, and so, you know, if anyone -- anyone else has anything to add, then please do, but that -- that was sort of the -- the best compromise that we could put down on paper and it does allow flexibility.

I mean, it -- it also acknowledges that the study plan -- the study plan doesn't put any fixed time frame on studies, so that's where you need to,

you know, discuss and work with the applicant and FERC on how long you think that the studies will take, and then if they need to be amended including the time line mid -- mid study then you can make, you know, make course corrections.

MS. MILES: I'd like to say one other thing. I think the hope, too, is that there will be a lot of, kind of, data on the existing environment at the part -- at the point we begin this pre-filing process, and that this time frame then can be trying to -- to -- to look real carefully at what studies are needed to get at the environmental measures that are needed for the project rather than using that time, sort of, to gather your basic this is the state of the resource information. We'll have to see how it works.

MR. CLEMENTS: There -- There's also nothing to prohibit a potential license applicant from getting an early start on these things, too.

MS. JANOPAUL: I -- I'd just like to point out for those who are carefully putting the -- the notice from the pre-NOPR next to this and looking at any differences, what John just mentioned was a huge, huge difference.

It was interesting during the -- the drafting sessions in D.C., a lot was loaded in -- proposed

to be loaded in before the notice of intent date. All that has been kind of dropped out, but, you know, it's -- it's now back to really starting from the notice of intent date, you know, a certain point, and that was -- that -- that was where the NOPR ended up, but if you -- if you compare it with what was proposed with -- with the IHC proposal or some of the things that were talked about in drafting, they started the -- the pre-licensing much earlier and they kind of accommodated that.

But we had -- we had proposals all the way from NHA, which proposed a one-year study period to -- I think the State of California proposed a six and a-half year study period or something like that, so we -- we had a variety of proposals to consider and we're still open on this.

MR. GROZNIK: The -- Frank Grozник again, and am I understanding correctly that if the utility wanted to be proactive, they could start the study four years and still be covered under this process? Then I don't see how, you know -- and I haven't read the whole thing word for word like some people, but I don't -- is that explained in here that you can do that and still comply with this and do one thing two years early because it has to deal with the lifecycles of fish and -- or not?

MS. MILES: There isn't anything

specifically in the rule or -- or I don't even think in the preamble that discusses the ability to do it ahead of time, but there is nothing to preclude doing that; is there?

MR. CLEMENTS: We know the licensees know.

MR. GRIFFIN: But we also know that people say, well, you didn't say it so I didn't know I had to do it.

MS. MILES: Well, I can tell you right now, many people start way ahead of time and you all are involved and if -- if people --

MR. CLEMENTS: The right ones, too, yeah.

MS. MILES: -- if people choose to, then that will be fine, but as everyone said, it's -- was -- we needed to be very clear this process that we're developing fits within the statutory time frame that's laid out for us and that's the five-year time frame.

MR. WELCH: Anyone else on time frames for studies? Brett.

MS. SWIFT: Just -- Brett Swift of the American Rivers -- clarification, and I -- I was just digging for it and maybe this is more appropriate to wait until later. There's some -- There's some language in here

about studies that can be completed at different times, some before the license application is filed, some that is after file but before issuance of an order and then some after issuance of an order.

Is that -- What process -- Is that specifically traditional? I -- I guess I'm confused, because I -- I see it here. It's in 16.8 but I don't -- I was looking at something I printed out before, and does that apply to the ILP as well and how would that affect --

MS. MILES: Where is it in 16.8?

MS. SWIFT: Well, I don't know because I don't --

MS. MILES: Okay, let me say one thing, generally. I -- It's not ringing a bell with me, Brett, so I'm not quite sure, but 16 -- we have incorporated into part five. We've -- We've tried to make it sort of a standalone process rather than doing cross-referencing, so the 16.8 will apply to relicenses under the traditional process and only if specifically cross-referenced in part five does it apply to the ILP and we tried to keep that away as much as we possibly could. If you find it, let us know then.

MR. WELCH: Brian.

MR. NORDLUND: Brian Nordlund from NOAA Fisheries one more time. I was wondering if you all

had considered any mechanism to complete studies after the license was issued that would essentially be a complete license with the exception of fishery prescription that needed studies before the option.

MS. MILES: I don't think so. No.

No.

MR. NORDLUND: I guess -- well --

MS. MILES: No, I mean, there's always the opportunity to use an adaptive management approach. Certainly people who come to settlements, there's -- that's often a part of the package, but, I mean, there's reservation of authority.

MR. NORDLUND: Yeah, well --

MS. MILES: Choosing to do that rather than prescribe, so --

MR. NORDLUND: Yeah, I -- I suppose that would be the mechanism you could use to do that if -- if we reserved our authority and/or, you know, the applicant was still completing studies on, you know, fish weight. That was a complex situation where we didn't have them ready -- readily available to answer that, possibly be that, basically -- and that would be consistent with what you have way out here, too.

MR. CLEMENTS: We -- We rarely hear someone from a resource agency make a suggestion such as

yours.

MR. NORDLUND: Wait a minute, what did

I say?

MR. WELCH: Well, write it down,

Brian.

MR. CLEMENTS: The idea that a license

-- The idea that a license would be issued where there's a major issue outstanding.

MR. NORDLUND: Well --

MR. CLEMENTS: I mean, the -- the --

the general -- the general position that we get is that's illegal.

MR. NORDLUND: I'm -- I'm not

suggesting that's the major issue here. I'm saying the details of the design might still be outstanding. For example, it may take several years to develop hydraulic studies in a reservoir that you need to -- to prescribe the fish way that you think would be most effective. I'm not -- I'm not suggesting that we would sort those issues out and call them solved, you know, before -- before the time is right to do that.

I'm suggesting that sometimes we need additional information and I don't want that to necessarily stand in the way of other mitigation that goes with the -- with the new license.

MR. CLEMENTS: Now it sounds like a --
sort of a gray area where there's probably some
flexibility that will have to be done in some cases.

MR. NORDLUND: Now here's a feat to
call it adaptive management. It's more of a process to
get to the right design.

MR. WELCH: Okay. Anything else?
We've spent a little -- quite a bit of time on time period
for studies. With the groups' permission, can I move along
here? Study requests at different times during the
process. Brett, was that one of your -- yours?

MS. SWIFT: It was. It was the
clarification on the different standard that has to be met
at the different stages because I think some were good
cause and some were exceptional circumstances and a little
bit more discussion on what that means, and I think there
was some inconsistency at one point. That's why I just
wanted clarification on which applies where.

MR. CLEMENTS: This is going to take a
minute to kind of look through here.

MS. SWIFT: And we can probably just
move on.

MR. WELCH: Okay. Let's -- why don't
we go ahead and -- and while he's doing that -- some
people wanted to talk about the study status meetings.

Now we have a -- a -- a -- two of those meetings, one after the first year of study and one after the second year of study. It says what would be helpful at those times. Anything on that? Nan should --

MR. CLEMENTS: Actually, go back to -- to Brett's because I -- I think I -- I found the places there. If you -- If you look at 514B, which is on page D64, and this is request for additional information of studies after the initial status report, there's a good cause standard there, and then there's, I guess, seven criteria that you need to address if you want -- want a new study or additional information.

And then when you get to section C, which is over on the next page, it gets bumped up to extraordinary circumstances, and the -- the theory of this is that the further along you get, the more information you've gotten and the more issues you should have resolved. And if you want to start raising new issues, the further -- the deeper we get into it, the higher the bar becomes.

And then if you look at draft license application, 5.15D, where there's yet another opportunity to request additional information or studies, that's also got an extraordinary circumstances standard and you have to address the same things that needed to be addressed

under 5.14.

MR. WELCH: Our final topic here is something that Nan raised about study and cross-resource issues. Did you want to say a little bit more about that, Nan?

MS. NALDER: Just very quickly.

MR. WELCH: Okay.

MS. NALDER: I think I --

MR. WELCH: Yeah, I think you --

MS. NALDER: The -- The issue here is when you're -- Nan Nalder, Acres. The issue here is when you're designing the studies and you're going through the determination that these are going to be studies you're going to perform. It would be very helpful if there could be a cross-referencing across media, like terrestrial, aquatic, recreation so that you could identify areas that might be in conflict or methods that might be in conflict at the earliest opportunity, because if -- if you're just doing this out in work groups, isolated, which is the way it usually happens, you don't get to cross-resource examination until after the studies are done, and then there's this, gee whiz, why did we spend all this money and do the study.

MR. WELCH: Okay. Anything else on -- on studies here? Ted, did you have something?

MR. HOWARD: Yeah, I just wanted to make one comment in regard to studies and -- and native American issues. This will probably be discussed tomorrow but I just wanted to share it with the -- with the people that are here today -- is the need for confidentiality restrictions because many times regarding native American issues and site specific information, it's very sensitive information, so that -- that's something that needs to be a part of it, as well.

MR. GROZNIK: This fits under both studies and dispute resolution so maybe I'll lead into the next section with this, but I was reading under 5.13. This is Frank Groznik. 5.13 D3 says the third party selected by the other two panelists from a pre-established list of persons with expertise in the resource area, which is great.

Then it goes on to say, if no third panel member has been selected by the other two panelists within 15 days, then the two panelists can carry on without the third panelist, and that just seems contradictory, I guess, to me, that, you know, you would say, well, we can't agree on someone who's going to cast the vote because we don't know which way we vote, so we can't agree on it, so we're gonna not have the third party and not, you know -- and -- and call it a draw. So the

question is do you see that as a problem?

MR. WELCH: We -- We had -- We had an -- We had an issue with that. You know, what happens if you can't decide on the third person, and we just sort of sat down and thought, well, we can't let it stop the entire process forever.

So the idea was to go forward and if the vote is one to one or two to zero and then the decision of the panel, whatever the vote is, then moves on, regardless of what the vote is, to the director, the director would just have to look to see how those two people voted and weigh that accordingly.

MR. GROZNIK: Well, another option I might suggest, then, is to have the director select the third party or somehow force them to select a third party.

MR. WELCH: I see.

MR. GROZNIK: This -- This way, you know, you basically legitimate stalemate, or legitimize stalemate.

MS. MILES: Yeah, Frank, we hear you, and that's a good suggestion and other people may have suggestions. We had a lot of conversation around this, and the idea is how do you keep the process moving because this dispute resolution is in a very fixed, short time frame. But obviously, it would be better to have a three

member panel.

MR. GRIFFIN: If -- If I could add something to that. It's not -- It wasn't envisioned that it would only be in cases of stalemate. Part of the concern was that it's such a short time frame and you're trying to employ the expertise of some professional, you know, and you have 15 days or 20 days to find that person and get them engaged and all that stuff. There was a concern that no one would be available so it wouldn't just be in cases of -- of not being able to agree on the third party.

MS. JANOPPAUL: You know, I -- I hope this gives some comfort to people, but, you know, these study dispute processes were seen to be an extraordinary, unusual circumstance. Again, this is -- this is -- this process is entered into with high hopes, good attitudes, giving other parties the benefit of the -- the doubt, the scoping process. A lot of other things that we usually don't have until we reach this spot in the traditional process which is usually after the application is filed.

So, you know, I -- I don't know if it gives people any comfort but we thought that -- that this formal dispute study process or we hope it will be the really exceptional circumstance that it happens at all. But we did start talking about, my God, what if you have

study disputes? What if you have multiple study disputes in every case? You know, the -- the -- I'll tell you this was a real concern to my field and to my own office. How many people are we talking about? You know, oh my God, every case we could be talking about five people from the Washington office from different -- you know, working on umpteen cases, so we -- we definitely wanted to move this along quickly.

We're still hopeful it will be the unusual circumstance, but I -- you know, I -- I agree with Kerry. We thought it would not be the circumstance that Frank describes where the FERC guy and the Fish and Wildlife guy say, no, we can't agree on anyone there. It's that, you know, given the short time span, we would look at the pool of experts and not find anybody available.

You know, there are so few consultants, and we talked about what we're going to have to do to go beat the bushes and, you know, find people from U.S.G.S., Army Corps of Engineers. We're -- We're really going to have to look around, we think, to build up that third party pool to get it going.

I mean, we talked -- this was -- this was a very hot topic of discussion and some people did not want to include this language, but we thought that there

will be those circumstances where we simply cannot find the appropriate expert in the appropriate period of time to join us on the panel, and -- and we thought this was a key stone to make this process go forward, so --

MR. GROZNIK: But what the language says --

MS. JANOPPAUL: Yeah.

MR. GROZNIK: -- doesn't say that.

The language says that if these two people can't agree in 15 days the process is going to move forward. If the language said if we -- if we can't find anyone willing to serve in 15 days, and it says we can't find anyone willing to serve in 15 days, the process moves forward, that's not what the language in this document says.

MR. CLEMENTS: Well, it just says if no one's been selected and it doesn't -- it doesn't specify a reason that might or might not happen.

MR. WELCH: Go ahead.

MS. BONANNO: Kristen Bonanno, Oregon Water Resources, I might point out that you have that problem not only with the third person but also the second possibly where you have one or more agencies or tribes that file this notice of dispute and you require them to agree on one person. I would see that as being a problem as well.

MR. WELCH: Anything else on -- under
-- under studies?

MS. JANOPAUL: I'll -- I'll just say
since -- since I think my issue won't be gotten to of
other -- other changes in the TLP, Forest Service believes
that because of the necessity of involving FERC in the
study dispute resolution process, that if it's going to be
added onto the TLP, you're also going to have to add on
early FERC involvement, just like you're talking about an
ALP and the ILP. It's the third thing that we think is
absolutely necessary apart from public involvement and
study dispute resolution process.

We know it's a tough staffing move but
-- but I also want to point out the chairman brought that
up, the possibility of early FERC staff involvement in the
traditional process. So we kind of feel that the study
dispute's going to work by putting into the TLP we -- we
got to have FERC staffing that early, too.

MR. WELCH: Okay. Let's move on to
accommodating settlement negotiations including a time out
provision. Now many of you have probably been involved in
-- in settlements so you can probably sort of -- we'll
hear a little bit about some of your on-the-ground
experiences with this.

MS. BONANNO: Kristen Bonanno, Oregon

Water Resource Department, I notice in your NOPR that you had decided not to provide any time out provision because you thought that if you cut the strict schedule, it would put pressure on the parties to move forward and -- and get to settlement negotiations.

And I guess I only have two issues with that. One, it's very hard to participate fully and meaningful in settlement negotiations while they're going on and still keep up with the FERC process and so there's a -- a resource issue of just doing all the work.

And then the second issue I think is something that Keith pointed out, which is it's sometimes detrimental to the settlement. It quite often is detrimental to the settlement negotiations if you're trying to write your terms and conditions and still be a good faith participant at the negotiation table, so I would really encourage, you know, some sort of time out exception.

MR. WELCH: Nan.

MS. NALDER: This is somewhat related but it has more to do with having adequate information for the agencies to come to the settlement table. If you have one of those anomalous years that you referred to in other places, I -- I think you need to consider this also when you're discussing settlement. You -- You need to have the

studies complete. I mean, you should have the studies complete if the agencies need them in order to participate effectively.

MR. WELCH: Anyone else on settlement negotiations? Moving on, talk dispute -- No, we did that. Where are we, right here?

MS. MOLLOY: That was -- It's the dispute resolution process, non-mandatory condition and application of it to state 401 process.

MR. WELCH: Okay, yeah, application of the dispute resolution process to state 401 agencies.

MS. ZEHM: I know that this will be a topic at the Sacramento workshop next week because they've already indicated the California folks, but the states have definitely been discussing what we see as a lack of clarity in the rule language itself about whether binding dispute resolution applies to state 401 agencies. And it's our understanding that FERC did not intend to suggest that FERC could bind state 401 agencies in a way that prevented us from requiring the information we need to do our 401s.

We think that you did a better job of explaining that in the preamble than you did in the rule language and we think it's very important that you clarify that in the rule language as well, so if FERC has a

different intention than I just described in terms of binding 401 agencies, we'd really like to hear it because we need to talk about it.

MS. MILES: Can -- I just wanted to have one little bit of discussion. I -- I don't think we have different --

MR. CLEMENTS: The position hasn't changed since the other day.

MS. MILES: Right, but I think the hope is that the 401 agency would come to the table early, would participate in -- in establishing the process plan and laying that out, what their study needs are so that it's done -- it's integrated in a -- in -- in the way that contemplates even though it can't bind it. And so I -- That's the kind of understanding that I think we're hoping for.

MS. ZEHM: And -- And -- I mean, I obviously can only speak for Washington, but I think in the discussions that all the states have had, I mean, we asked for integration as loudly as anyone did, and it's certainly not my intent to suggest that the states or Washington State in particular would be operating in bad faith here or wouldn't be participating to the best of their ability, because you know I have a funding issue that I've resisted talking about today. So I had to say

it once, but, yeah, it's definitely our intent, I think, to the best of our ability to be involved in a way that you described and to get our study needs on the table early; that there is some provision for recognition; that sometimes study needs come up after you wish they would have because maybe you learned things or got requests from a stakeholder that you didn't anticipate that now you understand have to be addressed. But again, this is simply an authority question and we're all bureaucrats, those of us who work for agencies, and we know that those authority questions are important so I just don't want that to become a -- a big issue so we just simply ask for that clarification in the rule.

MR. MCMURRAY: Greg McMurray, Oregon D.E.Q., always speaks for Oregon eloquently.

MR. WELCH: Anything else under the dispute resolution process and how it might apply to 401 agencies or other mandatory conditioning agencies? Keith.

MR. KIRKENDALL: Keith Kirkendall, NOAA Fisheries, I guess, Mona, I'm going -- I'm going to respond to you about the idea of you thinking this dispute resolution process probably won't be used a lot.

The dispute resolution process that was already on the books wasn't used a lot and it was largely because agencies didn't have a whole lot of

confidence that they took the mandatory terms and conditions and -- or that authority and handed it over to FERC that -- that they were going to get a resolution that's workable for them.

And -- And so, you know, to lay this process out and put three people on a panel and have them put forward a proposal, all I'm reading is when you get down at the end of the day, 70 day -- seven days in, it's still FERC's call.

And -- And -- And so, you know, I'm probably not gonna be wanting to push this process either because, you know, it's a clear record that FERC makes decisions on a whole lot less of information than we typically want or are comfortable with, so that's --

MS. JANOPPAUL: I'm -- I'm not saying it's the perfect process and I -- I -- I was not on the drafting committee that specifically worked on this. There was a separate drafting committee that had Kerry and people from Fish and Wildlife Service and others, but the -- the -- the thought was, again, not that I think, but I hope that it would be the unusual circumstance and I think that's -- that's the whole idea, this integrated licensing process in general is that it's gone into with a good attitude. If it's not, then it's not going work.

But -- But in general, under the

additional process, agencies have had the circumstance that it's not until the final application is filed and there's a request for comments and additional information or study requests at that point.

And at that point, we're out of the study phase. It's quite a burden both on the -- on the agencies to have to demonstrate the -- the need for studies at that point, for FERC to make the decision at that point and for the licensee to have to go back and do the studies. So we did think that this was the appropriate time to move that process up to.

And at that point, we would all just have some certainty. We wouldn't be waiting post facto, post filing of the application to deal with it then. We'd know that we were either going to get that study or we weren't going to get that study.

We decided it was absolutely necessary. We could find, you know, some other way to seek the information. And -- And -- And we've had a lot of discussion on that, if -- if the commission decided not to but the commission was not going to give up that authority and we thought that's fine but we'd like to know earlier, and so that's -- that's how it was worked out. I -- I don't know if Kerry wants to add anything.

MR. GRIFFIN: Well, I just -- I just

wanted to add that the other -- the other piece of this is that it will create a more robust record.

MS. JANOPAUL: The nice -- The nice -- The nice corollary that I -- I have been talking about is the corollary that there are those circumstances where we submit -- I'll say mandatory terms and conditions -- where later on they are challenged either in hearing or in petition for review as not meeting the substantial evidence standard.

The corollary here for me is if it's absolutely determined that there's sufficient evidence out there for you to make your decision, that -- that argument, to me, is sort of, you know, precluded or -- or addressed. So now you've been told by the licensing and the commission that you have enough evidence to make your section 18 decision so make it on whatever evidence you have.

MR. WELCH: Anything else on --

MR. BLAIR: Tim, Brett has something.

MS. SWIFT: Well, can we go to the non-mandatory conditions part?

MR. WELCH: Yes, please.

MS. SWIFT: Mandatory conditioning agencies, I guess just a -- you described with the study plan piece of it a two-phase, kind of a more informal and

then the formal process, and I -- I can't recall exactly who makes the determination in the informal phase, but I'm having a hard time understanding why dispute resolution at that phase, formal dispute resolution, whether the commission retains the authority, whether it's straight to the director, why that isn't provided at that stage of the process in light of how critical the study plan is.

MS. MILES: So Brett, are you asking for -- can you -- can you use the boxes on the flow chart and tell me where you're asking to have an additional opportunity to take your study dispute to the office director? It's probably around box ten.

MR. WELCH: Box ten would be the commission's decision on the -- on the study plan. At that point, the commission would be making a decision --

MS. SWIFT: So the -- It's the commission that actually decides on all the studies and that kind of clears everything.

MS. MILES: Yeah.

MS. SWIFT: And it's only then if you have a mandatory that you're allowed to --

MS. MILES: Right, I think -- I think this is the thinking. You've had the opportunity, you know, to provide details. In box eight you're providing comments on the scoping document and the scoping document

has in it the applicant's study proposal. So everyone has that opportunity to provide comments. Then there's a meeting where there's opportunity to discuss any disagreements. That's box nine.

Then you go to box ten where after that meeting the applicant has the chance to make any revisions that they think or they may have agreed to at the meeting. Then that is filed with the commission. And based on that record, it is the office director. It is --

MR. WELCH: 512.

MS. MILES: In 11, box 11, it is the office director who's making that decision, so that is -- that is, in effect, giving everyone who is not a mandatory conditioning agency the opportunity to have the office director make a decision. Then -- Then the mandatory conditioning agencies have this additional.

MS. SWIFT: So our comments are really our opportunity to raise a very formal --

MS. MILES: Yes.

MS. SWIFT: -- I mean, formal dispute.

MS. MILES: Yes.

MS. SWIFT: And then one follow-up question. In -- In light of the -- I guess I'm also trying to get an understanding of if there's an additional information request and a dispute later in the process, if

it involves an agency with mandatory conditioning authority why there isn't a similar kind of three panel -- kind of, why the distinction there. And I understand the tension with keeping the process moving, but it seems to me that there would be similar issues regardless of when that dispute arose for agencies that specifically have mandatory authority.

MR. CLEMENTS: We -- We just -- in -- in developing this, didn't think we could go to the panel again and again after the first year of studies if necessary, and again after the second year of studies and then in response to a draft license application.

This is the -- Again, we thought the formal dispute resolution was hopefully a -- an ex -- a rare thing, and it's -- it's very, of course, labor intensive and we're calling on volunteers, you know, to assist us in the form of those -- those third party neutrals. That's a -- That's a lot to ask of everybody and you just can't keep doing it again and again and again and get anywhere so -- and that's basically why we made that cut.

MS. JANOPPAUL: And I'll just speak for the Forest Service on this, if Interior Commerce has something else to say on it, but we -- we also did somewhat agree to be bound on this and -- and that has to

do with -- with having those mandatory authorities. I don't see, you know -- Polly's mentioned the states can't be bound by it because they have a different authority on the Clean Water Act and they can still go out and require studies.

What is it that we would bind members of the public on? I mean, how could you possibly be bound? Whereas we're -- we voluntarily agreed to be bound by this. We're not going to volunteer anyone else to be bound by this decision. You are not going to give up that opportunity to -- to file for rehearing or -- or seek a petition for review if you're not satisfied with the outcome. But as federal agencies, we have made that decision or at least we're proposing that.

Now if you don't think that's appropriate, please make comments. But, you know, we -- we've got -- we've got congressional interests. We've got the National Energy Plan. Chapter five of the National Energy Plan, they make specific recommendations about hydropower licensing and this is -- this is where departments have agreed to go in order to facilitate the implementation of those. This is a critical piece of it.

Again, we're hoping it's the rare circumstance, but it -- but -- but, you know, we've agreed to be bound. American Rivers, the state agencies can't --

can't be bound in their -- in their non-mandatory conditions, that kind of thing.

MR. WELCH: Okay, we have about 15 more minutes 'til our afternoon break. Is there anything else on here? Like to move along to the cooperating agencies, if I can.

MS. BONANNO: Kristen Bonanno, OWRT. My comments are somewhere between the study discussion and the dispute resolution, and that is just to note that you allow 30 days to write substantial comments on the study plan and then 30 days to make sure that those issues are resolved and then another 30 days for the applicant to revise it.

In my mind, that's just simply not enough time. We have more than one project to work on right now. In Oregon, we're working on seven FERC projects. We have one project that has 11 studies that are in dispute. We've been trying to resolve those for the last two years and so it seems like if you're going to have meaningful comments and an opportunity to have meaningful dispute resolution before getting kicked into the formal process, that you need to provide a little more time to do that.

MR. WELCH: Okay, let's move along to our next topic, cooperating agencies and intervenors.

Mona, did you have something you wanted to open this with?

MS. JANOPPAUL: I -- I did want to say something but if somebody wants to describe their issue first.

MR. WELCH: Okay. Did anybody have a -- the change in the policy with cooperating agencies and intervenors? Nan, Nan's got her hand up.

MS. NALDER: Let other people talk.

MS. JANOPPAUL: Yeah, I -- I think there were -- there were -- there was somebody in the --

MS. NALDER: Let somebody else go ahead. The concern was expressed when a group of us were sitting around the table talking about when you're putting together a document, and -- and I used to put together EI -- EISs at FERC, and I do applications at USI.

There -- There -- You know, there's a lot of opportunity for procedural things to fall through the cracks and that's usually where agencies get dinged is on procedures. And my concern is that if somebody is sitting in there and they're cooperating and they can't find anything of substance to really get at it but they know that this thing happened, what's to stop them from doing that? And -- And you know they do that with NEPA. Most of the NEPA cases are procedure.

MR. CLEMENTS: From -- From doing

what?

MS. NALDER: From intervening.

They've -- They've been on the inside. They have all the information. They participate in putting it together.

They know where they've -- know where -- where things probably weren't quite done the way they ought to have been done and things got dropped or left out or they have inside information and then they decide that they don't like the decision. They shouldn't be able to use that inside information to federally intervene.

MR. CLEMENTS: I -- I don't get the connection between having what you're calling inside information and being permitted to intervene.

MS. NALDER: A cooperating agency is going to have inside information just by being a cooperating agency and sitting at the table and -- and writing the document.

MR. CLEMENTS: Yeah, it will have off the record discussions with the commission staff --

MS. NALDER: That's -- That's what I'm getting at.

MR. CLEMENTS: -- studying the merits of the application.

MS. NALDER: That's what I was getting at.

MR. CLEMENTS: Okay, now again what's the connection between that and whether or not they should be permitted to intervene?

MS. NALDER: There -- There was a lot of issues raised in discussions in the industry that the -- an agency could then just, you know, sit there and make notes and come in afterwards and -- and slap an intervention down using the information that maybe -- maybe they didn't get their way inside.

MR. CLEMENTS: You -- You really -- You don't need the inside information as the basis for an intervention. All you need is an interest.

MS. NALDER: No, I know -- I know you don't, but --

MR. CLEMENTS: So I'm not sure how they could use information gleaned as a cooperating agency as the basis for an intervention.

MS. NALDER: Well, if you've got trust in the cooperating agency, what is this intervention about?

MR. GRIFFIN: Let -- Let me see if I can take that for a second. Your concern is that -- that there will be some challenge and intervention in the future based on a procedural mistake that, you know, whatever, but -- but those procedural issues will -- will

all be sort of public -- publicly available; right? Like, you know, in the form of your draft DIS or -- or any of the other sort of public documents required by this.

So I'm -- I'm trying to envision how you could intervene on an off the record, you know, discussion because wouldn't it -- if you're challenging on a -- on a procedural error or misstep of some sort, that misstep would be publicly available; right? So --

MS. MILES: What I'm wondering, Nan, is if you could give an example, because I think it's -- it's hard for us to picture what that might be that's --

MS. NALDER: Okay, I don't want to drag this meeting out. I will provide some information --

MS. JANOPPAUL: Well -- Well, I -- I -- I am interested because I have heard there's a -- there's a reaction in the industry so I do -- I really do want to hear --

MS. NALDER: I don't want to drag it out right now but -- but there are issues and I would be happy to provide separate information.

MS. JANOPPAUL: Okay. You know, I -- I just want to point out that the -- that the -- that the corollary proposal in the -- in the NOPR is to allow intervention by notice, rather than having to file a motion requesting intervention and then having it be

granted. And -- And I think that's a real boon for agencies.

This -- The cooperator/intervenor distinction has come up because it's become the commission's policy. I think somewhat with the concerns you're talking about, that we have -- we have access to -- to drafts of the document, ex parte concerns, and -- and I've heard from other FERC staff in the interest of justice and fairness that it would be wrong for us to be a party after we've been a cooperator to the NEPA document.

This is -- This is -- I'd just like to -- to point out, to my knowledge, that the Forest Service is the only agency that has regularly been a cooperator in the NEPA document with FERC, and that's, you know -- I -- I think -- I think language somewhat restricts it to land management agencies and tribes with 4E authority. I -- I think agencies with section 18 have been called sometimes consulting agencies or -- or 10J but there's been some different terminology, but the -- but the term cooperator has been mostly reserved for land management agencies.

Historically, B.L.M. has not been active. It is becoming active. I'll let Mel address that if he wishes. But historically, only Forest Service has been a cooperator or felt the need on occasion if -- if the FERC NEPA document isn't sufficient to do its own

additional NEPA work, because in addition to this, we have had an agency appeals process under section 215 of the USDA regs.

And we have said that our issuance of 4E conditions -- and -- and this has been a practice. It's not even been raised to the level of a policy. It's never been in the regs, but it's been a practice that since the 215 appeal process was implemented, it's been our practice to say issuance of 4Es is an implementation of our forest plans, and therefore, is our final agency action and subject to this 215 appeal process.

So that has required that we have a NEPA document. Neither interior or commerce has ever made the move to do a separate NEPA document. So it's really just been the Forest Service. And I want to point out, because apparently it wasn't clear, that as part of the chief's initiative to relieve what he's called analysis paralysis following the wildfires and as part of the president's healthy forest initiative, we have been looking to cut down on unnecessary process.

There was a federal register notice out about reinterpreting our 215 appeal process. It really wasn't very specific with regard to hydropower, but I can tell you that the -- that it is likely that the 215 appeal process we will be changing our practice and it --

MR. WELCH: Will that -- Will that affect your cooperating agencies?

MS. JANOPPAUL: Absolutely. Absolutely.

MR. WELCH: So are you saying it would be less?

MS. JANOPPAUL: But -- That's exactly right because we would not feel that we needed to do NEPA. The only cases where we would need to have a NEPA document would be those cases where we also have a special use permit for the project under FLPMA and that's coming to an end and we'd need a NEPA document for that.

But -- So I -- You know, I think this is going to be less a case if -- Forest Service, I believe, has been the only agency that's regularly been a cooperator. I think in the future, will -- there will be even fewer cases where we will be a cooperator, but because of this dichotomy and FERC policy, we've been moving away from being a cooperator anyway because we need to be an intervenor, and this gets back to your issue, not that we would necessarily challenge the FERC decision, but it becomes the FERC practice not to defend our mandatory conditions as they're reflected in the license.

So Department of Interior, Department of Commerce and Department of Agriculture have made it a

practice to intervene and I think Interior even intervenes in opposition in every case -- but have made it a practice to intervene so that they can be parties to any petition for review and defend their conditions there.

Now if FERC changed its practice and represented us in court and whatever and worked with us on defending our conditions in its license, we wouldn't need to do that either, but that's --

MS. NALDER: That clarifies one of my questions.

MR. WELCH: Good. Good. Is -- Does -- Does anyone else have anything with cooperating agencies? Yeah, that's right. You have one.

MR. SAUNDERS: Just a -- maybe a slightly different perspective. Steve Saunders with Washington Department of Natural Resources.

We're both a regulatory and proprietary state agency, and although, taken from the regulatory perspective, we would prefer to approach FERC issues from a -- a cooperating agency perspective, we found that we don't feel that we can compromise our state trust land mandate responsibilities by doing that, and hence we have been taking the intervenor status route.

We actually feel that we could probably be more effective by participating more from a

cooperating agency perspective. But again, legally, we can't -- can't relinquish that intervenor status legal option that we have.

So I would -- I'm encouraged by FERC's direction breaking down those barriers. I think that, yeah, there may be some situations where co-op people and -- and groups that are operating as a cooperating agency might be able to use that advantageously.

I think in reality we -- at least from our experience and perspective is that the opposite will occur, that there -- that like participators and cooperating agency, they're much more likely to have the issues addressed and not have to then exercise legal options as an intervenor.

MR. WELCH: Okay.

MR. CLEMENTS: Just for clarification

--

MR. WELCH: We got -- I'm sorry. Go ahead.

MR. CLEMENTS: The change in policy only applies to federal agencies. The commission was desirous of applying the same rule to state agencies but we couldn't find a way to do that and stay in compliance with the Administrative Procedures Act, so it's limited to federal agencies only. The state agencies will continue

to have to make that choice.

MR. SAUNDERS: Okay, well, I guess then I have to augment my comments by suggesting that that be a -- a -- researched maybe further, you know, because it does, then, put us in a bind that we would prefer not to be in.

MR. WELCH: Anything else on cooperating agency? I'd like to -- We're going to take a break here in about five minutes. I'd like to tackle at least one more issue before we go on the break. Anything with -- more with cooperating agency? Okay, contents of the draft application, right now, there's a requirement in --

MS. MOLLOY: Wait, the one above that. What about clarifying roles?

MR. WELCH: Scrolled down on me. Okay, clarifying roles of commission staff and availability of commission staff. As we said earlier, in the integrated process, the commission staff is going to be involved, unlike the traditional, right from the very, very beginning so we've had discussions about that at FERC about how that would work and we're interested in hearing what -- maybe what you -- some of your concerns about that are. Pam.

MS. KLATT: I'm just curious on -- on

whether there's been any discussion about trying to staff all these projects from the Washington office or whether regional offices would be staffed up so that you'll have more local representation than you do.

MS. MILES: We've talked about needing to staff it. We haven't talked about where the staff would be. But certainly, it looks to us like, assuming that -- that an integrated process does go through in July, that we'll have about three years of a -- a blip of needing to spend a lot of time pre-filing with people using the ILP plus having a whole lot of applications filed for very large, complex, contentious projects. And so we know we will need either more staff or more contract dollars and we're looking at it.

MR. WELCH: Anything else about commission staff and how we're involved in the integrated licensing process? Okay, why don't we take a 15-minute break and be back here at quarter to 3:00. We've got about two, four, six, eight, ten, 11, 12 -- be back here in 15 minutes and not a minute later.

(Whereupon, a brief recess was taken.)

MR. WELCH: Okay, our next topic is draft application contents. Recall in the integrated licensing process under the new part five, there's a requirement for a draft license application that is

essentially identical to the -- in format to the final license application. And that's to be developed towards the end of the study period and obviously before the final application is -- is filed and that is sent to the participants in the process for review and comment.

We have posed a question about that in the NOPR about whether this draft application is necessary. And if not, you know, what would be its substitute, so feel free. Well, maybe the person who had that is -- is out right now, maybe the 13 people. There we go. That always brings one.

MR. MCMURRAY: Greg McMurry, Oregon D.E.Q. I hope this isn't cheating, but on D65, you talk about what's going to be in the draft license application, and you talk about to the extent practical, the Exhibit E that's then described in the next section. And you have a -- a place holder there for the section 401 with Clean Water Act, must file a request for water quality certification. That's in the final.

So the question is why not make that a full blown draft 401 application; all right? In other words, to the extent feasible, I think that would all help us get to where we want to be in developing all this information to get -- to let -- allow the agencies to react with possible conditions and -- and let us boot

strap up to ourselves to where we've got a better idea of a preferred alternative for the end process.

MR. WELCH: So -- Go ahead, Ann.

MS. MILES: Are you suggesting that the draft application contain that information, a full blown 401 application?

MR. MCMURRAY: Yes.

MR. WELCH: Yeah, Steve, I'm sorry.

MR. PADULA: Steve Padula, Longview Associates, try not to repeat my comments from the morning, but in -- my -- my sense is with -- with this demanding process and schedule is we just need to be smart about how we use our time and -- and when you're at that point in this process, still very likely in the middle of your second field season while you're having to also now devote resources to the preparation of this big draft application document.

For -- For the licensee side, that's gonna -- that's gonna devote -- take some of your resources and you're going to have to put them in a couple of different places. Then you're going to hand it to agencies and you're going to expect them to do the very same thing. They've got limited resources and limited time and you're going to be asking them to vote, participate in continuing study review work.

And also, by the way, could you fit in your review of this complete draft license application? And -- And my only recommendation is we think about what would really be useful at that point in time, and given that we've moved a lot of information sharing up front, in -- in the preliminary application document, so a lot of -- a lot of what you -- you might not in a traditional process have seen until the draft application. A lot of that is actually going to happen a lot sooner in time. So you've got that basis of information sitting out there.

The only question I'm raising is -- is you -- could you do something more effective that's maybe more, you know, functional in terms of information sharing and not have people worry so much about the exact format of funneling Exhibit A through H? Because again, a lot of that information, my own personal experience, is that doesn't really generate much in the way of interaction or comments at the draft application stage.

People are focused on Exhibit E type information so instead of taking very limited resources and limited time and putting too much of it towards that -- that traditional license application document, it's really good to think about doing something different.

And -- And I don't have a specific recommendation, but I'm going to certainly think about

maybe what that -- that kind of information might be. It may be how it's formatted that -- that might fit more effectively into this place in the process.

MS. MILES: That was going to be my question, and I actually wonder if anyone's got any sort of off the top of your head thoughts in this room where we've got some people from different constituencies about what is the real key information that needs to be available at that point.

MR. PADULA: Again, I think, just maybe in a general sense -- I think to the ability they've been developed, the applicant's proposals, as specific as they can be, alternatives that may have been discussed along the way, again, proposed and maybe alternative protection, mitigation measures, and -- and the basis for it.

Again, the -- the current state of the science, if you will, and information that supports that. I will have -- recognizing it's a -- it's a point in time you're going to continue to move beyond that, but it clearly is a great place to say based on where we are today, here's where we think that might lead us in terms of final proposals.

MS. MILES: Does anyone else in the room have thoughts on that?

MR. WELCH: Pam.

MS. KLATT: If your Exhibit E is going to be formatted and look quite a bit like a NEPA document, then in there you can match your project description, a summary of the operation and so all of the information that you would expect to see in fairly lengthy detail in Exhibit A, B, C, would be summarized in an Exhibit E if it truly did take the format of a NEPA document, so maybe Exhibit E is what you really need and that's all.

MS. MILES: Any other thoughts on that?

MS. NALDER: We need some drawings and a map.

MR. WELCH: Go ahead, Nan.

MS. NALDER: When we were just recently putting one together, it just seemed ridiculous to do Exhibit H at the draft period for something we weren't going to change at all. But -- And -- And then also I felt -- found an awful lot of redundancy in writing the Exhibits A, B, C, D and then our PDEA and if -- if -- if you could focus that information in the summary form, like you have to in the front end of the PDEA, and if people needed to have additional information, they could ask for it but I don't see why you -- I mean, it doesn't really help very much to have all that extra stuff.

You would need to have, though, drawings of the project features and a map to the extent that the security folks will let you show those to anybody anymore.

MS. JANOPAUL: My recollection of the -- of the drafting working groups in D.C. last December, there were three groups that were split out into one handling study disputes, one handling the process up until the filing of the draft application, and a third group draft application on.

It happened that both of the second groups picked up the issue of draft license application. The one group came up with the extreme that they'd like to do away with it altogether. The other group said that it was -- they'd rather put all their effort into making a good draft license application and then not have much to do with finalizing it.

And that -- and that second group also did it with the express interest of having agencies have more information and be more likely to come up with preliminary terms and conditions at that time. That was part of their thinking, because I was part of that group.

I -- I need somebody from the other group to talk about why they were doing away with draft application altogether except they saw -- saw it as

superfluous, and I think for the reasons that -- that Pam and Steve were talking about.

Now what I -- Those -- Those things about doubling up that Pam was talking about, this is -- this is something that I think is really good for people to bring up this round. It's -- It's a tight schedule and -- and that's great if you could help us out on that.

MR. WELCH: I think what -- I remember having this discussion as -- as well about, you know, why, sort of, the other exhibits and it's also an opportunity for FERC staff to make sure that all the component parts of the application are going to be in place when the final comes in as opposed to waiting when the final is in and then having to go out and say, well, I'm sorry, you forgot this and you forgot this and we need more information about that, so it was sort of to make sure that the final license application was truly the final license application. That's kind of what we were thinking with the -- with those other exhibits being in there in addition to the Exhibit E.

But the idea about the Exhibit E, maybe -- I don't know, maybe just for the resource agencies and stuff and maybe, you know, the rest will be -- just be put on the FERC record that people -- people could come get it if they -- if they needed it. Maybe

that's --

MR. CLEMENTS: Another thought was that at the point where the draft application is -- is filed or served or whatever we're having people do with it, you're very close to the statutory deadline for filing the application itself, so the licensee is -- is likely to have these components in place already or very close to being in place.

And I guess the other side of that coin is, you know, how much do the -- the other participants really need to see to do what it is they want to do. There's two different things you're looking at. But, yeah, we'd -- we'd like to hear -- hear from people on this.

MR. BLAIR: Steve.

MR. WELCH: Yeah, Steve.

MR. PADULA: Steve Padula again. I -- I think that as we think about what to do at this point in time, I think it's important to think both, you know, again, the format and information, but also what we're asking folks to do because it's really a -- there was -- a big part of this is the resource question.

So even though folks may not think they need to pay much attention to a draft application, if you put it in front of them and give them 90 days to

submit formal comments, they are going to take a portion of their available resources and put it to that exercise.

So I think that's -- that's important to keep in mind, too. There may be value in making sure if someone is beginning to put together A through D so -- so you have it. I don't think we'd have to naturally say, and let's also put that out for formal 90-day comment period.

MR. WELCH: Right.

MR. PADULA: Because that may not be necessary but when you do that in this kind of a process, people will go take that very seriously and it's gonna affect what they have left for resources to do it.

MS. MILES: And there is, too, the cost factor of putting together things if they're not needed and we all need to have that -- I mean, cost and our time and effort, but also dollar cost and publishing the document.

Right. Right. One thing that I was just thinking about, maybe this is for the end, though, but the drafting sessions that we're going to have the end of April, beginning of May, we're going to need to hone in on what topics are the ones that are the most useful for people to work out.

This is an interesting one and I think

you all know better than we do about how much you're using in those applications and what's -- what's really -- what's useful to everyone. So we may want an outcome of this -- these regional meetings also to be what topics are the ones that should be discussed at the drafting session and people really want to see if they can get resolution that a license agency can -- can think this is a good way to go.

MR. MCDONALD: Stan McDonald with Bureau of Land Management. In section 5.15C, it reads that an applicant that has been designated as the commission's non-federal representative, they include a draft biological assessment, essential fish habitat assessment and draft historic properties management plan.

I'm assuming that the designation of commission's non-federal representative adheres to the authority of the Federal Power Act. Could you clarify how that -- that designation tiers to other authorities, and I'm thinking specifically here authorities such as in the National Historic Preservation Act that have very clear language about what kinds of tasks and authorities may be designated to non-federal agencies.

MS. MILES: Yeah, it really tiers to other acts other than the Federal Power Act. The non-federal rep for the biological assessment is under the

Endangered Species Act. And the same thing, the one you mentioned for the historic properties management plan is under the Historic Preservation Act, so that -- that's what that is about.

And early in the process we -- we are encouraging where applicants want to be designated to serve in that role for them to request it and then serve in that role through the process with, of course, FERC knowing that it's our ultimate responsibility.

MR. WELCH: Anything else with the draft license application? Brian.

MR. NORDLUND: I was curious, it sounds like the -- the particular step we were just -- I'm Brian Nordlund from NOAA Fisheries, by the way. The -- The 15 -- 5.15C that we were just talking about in regard to ESA, it says may include a draft biological assessment. And in my looking over the -- the flow cart in the back, I didn't see anywhere where that became a -- a mandatory staff versus a may include staff. Is there -- Do you have thoughts on where that should be inserted in the process?

MS. MILES: The draft B.A. by the applicant would come in either in their draft application or their application and then it becomes our responsibility. So compliance with the Endangered Species Act would occur after the application's filed. Is that

what you're asking?

MR. NORDLUND: Well, I -- I think that maybe you got it, a piece of it. If it's not provided here in the draft license application, you're saying it will for certain be in the final license application.

MS. MILES: Well, it -- it -- if the applicant has asked to be a non-federal rep, then I frankly don't know -- I don't know that they're required to do a draft B.A. but we would hope that they -- they would in that case. You probably know better than I.

If the applicant doesn't do a draft B.A., then FERC would do a biological assessment and this contemplates, like we do now, using our draft environmental document as the draft biological assessment.

MR. NORDLUND: Okay.

MR. WELCH: Anything else with draft application? All right, moving on to process selection criteria. As we said this morning, one of the questions we have asked, is -- is it appropriate to have criteria for use of the traditional licensing process under our -- our proposed, sort of, three pronged process? And if -- And if so, what -- what kind of criteria do you think that -- that should or shouldn't be? Right now, it just says good cause. An applicant should show good cause.

MS. SWIFT: Brett Swift for the

American Rivers. I guess, kind of, my initial reaction to that is if we want to encourage use of the integrated process, there needs to be a much higher bar than just good cause. I think the applicants should probably need to, kind of, provide an explanation of why something other than the integrated process has a higher likelihood of success. I mean, I don't know if that's what you were thinking about for good cause, but, to me, it needs to be a much higher bar than good cause.

And my second comment with regard to the process selection is I know with the alternative process there is actually a requirement that stakeholders be contacted up front, which to me is a very good thing. And if an applicant wants to use the traditional, there's no similar requirement and there's only a 15-day comment period, which, to me, is much -- it's basically inadequate input by other stakeholders with regard to that type of request.

MS. NALDER: Nan Nalder, I want to just say one word for the small project owners because I am, kind of, their representatives several times in this proceeding you have put together. They are very worried that the process that is in the ALP is already pretty difficult for them. They -- Too big a project and one little project and they're all someplace, it's not

interconnected, and -- and so it's not just that opportunity for -- for success but it's whether or not the requirements are commiserate with the scope of the licensing activity.

MR. WELCH: Anyone else on --

MR. CLEMENTS: Tim, can I just address that for a second. It just strikes me that the -- the process selection shouldn't really be a function of -- or, you know, what is needed to develop or process an application shouldn't be a function of the process.

If you have the same project, I would think that you would have essentially very close to the same data and information needs regardless of which process you use.

MS. NALDER: The data and information I agree with you, but the cost of the process and notification and meetings for a small community who has to go into their school fund to finance their license application is not very attractive, when they're on a remote island, very small, and it serves no purpose.

MR. CLEMENTS: But I'm -- I guess I'm not sure how it would be different under the traditional process versus this process for that applicant. Why would their expense of the application process be greater under the proposed process?

MS. NALDER: John, the ALP is --

MR. CLEMENTS: This is not the ALP.

MS. NALDER: I know, but the ILP,

which is said to take the same amount of time as the ALP and kind of looks like and walks like one except it has some improvements, takes a significantly greater ex -- extent of funding and time on the part of the applicant and if the scope of the project doesn't require that, why shouldn't there be a more streamlined way of getting at preparing a license application?

MR. CLEMENTS: Well, I'm not suggesting that it's -- that streamlining is not an appropriate thing. All I'm -- All I'm trying to say is that this process -- the integrated process shouldn't be equated with the ALP in terms of the amount of time and effort that people spend on it. It seems to me that the ALP is more time and labor intensive than this proposed process just by its very nature. It's a consensus building enterprise and -- and there's nothing in this proposed process that assumes consensus building is built into it.

MS. NALDER: So this --

MR. CLEMENTS: That's why it has things like dispute resolution so that --

MS. NALDER: This does not -- Okay, so

this does not -- There is no basis -- There is no base for
consen -- need for consensus and for having all of those
long meetings and work groups and all this stuff to get
the application together under this?

MR. CLEMENTS: There is only the
meetings and notices and -- and comment opportunities that
are specified in part five.

MS. NALDER: It's still pretty onerous
for a very small owner.

MS. MILES: And that is a question
that we've asked specifically about small projects and it
may apply to all the processes that are there. I mean, it
may apply to the traditional also, so we're looking for
your feedback on what you think that -- any changes that
we -- we might make.

MR. WELCH: Mona.

MS. JANOPPAUL: Yeah, you know, so many
FERC projects, I -- I think I've heard, what, 70 to 80
percent are small projects, five megawatts or less. I
heard those numbers thrown around by Chris -- Chris
Nygaard and Mark at one of these workshops, so we're
talking about a lot of FERC projects are small projects
and -- and I've seen the example of the small project used
for the reasons for retaining the TLP. But when we sat
down in actual drafting groups last December and proposed

criteria, like if the -- a small project without significant impact that the TLP be supported by all agencies that would have conditioning authority, blah, blah, blah, that was totally rejected by the licensees there because they didn't want that limitation. They also wanted it for the big projects.

So, you know, I -- I know that Keith keeps holding up this poster child of the poor, small, you know, 750 kilovolt project, but when it comes down to it, we did -- we could not reach consensus in these drafting groups that the TLP be limited to a small project, so if that's suddenly the criteria or interest again, please let us hear about it. But -- But we'd like to know if you agree to that because, you know, we resource agencies have a real concern about the TLP being retained and -- and dealing now with three projects and hybrids and even more hybrids, so it's -- it's a real concern to us so we are hoping that the public will come forward with a consensus on appropriate criteria for use of the TLP.

MS. SWIFT: One other follow-up, Mona. Something that you said triggered it. With regard to input, I do think that if -- if there's going to be use of something other than the integrated process there does have to be agreement among, kind of, the stakeholders there, I do think. I mean, we'll get more specific in

criteria in our written comments, but, to me, that is a --
a critical piece of it.

And I don't know if it's, kind of,
appropriate but we're talking about process selection. We
would still urge the commission to adopt a single process
to reduce the complexity, but, you know, I didn't think we
were going to discuss that today but, you know, I do think
it's difficult to draft the criteria, so --

MR. WELCH: Process selection,
slippage of time lines in the process. Cyrus, I think you
had this one.

MR. NOE: I suppose no one really
wants to talk about that because if you -- if you try to
institutionalize it, it's a self-fulfilling prophecy;
isn't it?

But one of the things that's
problematic I -- that addresses me here as a -- as a
newcomer is that if you get this fast moving train going,
then you -- you -- you're not entirely sure that you can
do in 17 months what you used to take 47 months to do on
account of streamlining. And I -- I guess raising it to
-- is simply an impression on my -- on my -- on my part
and I have no real notion what to do about it but I think
it's a real problem, particularly, if -- if you have more
participants onboard and less time. They may feel they're

being railroaded and that isn't a good idea.

MS. MILES: I wanted to say something about the time frame. Seventeen months is what we projected when we were looking through, you know, setting some -- some times here.

It was a little less than that when we adjusted an E -- an environmental assessment and no draft and final. It was a little more than that time frame when it required an EIS for a more complex project and this was the average of the two.

I would say the real goal is that it gets done in two years before the license application expires so that there's no need to go to an annual license, so -- so that's a 24-month time frame.

And the other thing is we gave consideration during the pre-filing time to do two different ways of doing it and it was a little hard to -- hard to figure out which was best because we want there to be some flexibility in each project for the project -- the -- the people, the stakeholders involved to set the schedule for what they think is there and yet you've got three to three and a-half years for it to happen in, if you kind of divide that up.

How we looked at it, it was about a year to get your process going and to get your study plan

in place and then about two years to do the studies and develop the application. There's flexibility within that time frames, but when we went to lay it out between every box that you had to hit, we ended up putting the time frames in there and there was only, like, one way that you could get 'em to all fit.

So -- So we were trying -- And this is to say you all think about that, too, trying to look at the flexibility for particular projects to establish schedules in a way that works with -- for them but to still have the same goals and achievements by the time that application is due.

MR. WELCH: Steve.

MR. PADULA: Steve Padula. Ann, do I read into your comment, though, that -- that, again, any suggestion that might allow flexibility to start before the NOI is dead on arrival at the commission?

MS. MILES: Nothing is dead on arrival but it will be a hard sell. Does anyone else want to --

MR. CLEMENTS: I would just say that even though a final rule may not make any specific provision for things to occur before the NOI, there would not be anything preventing an energetic license applicant from doing those things.

MR. PADULA: And I understand that.

Again, we -- we essentially create a formal process and you leave the opportunity for informal things to happen. But -- But as I -- as I've seen that played out in -- in other processes, again, if one of your goals is efficiency and effectiveness, then to force a licensee and all its stakeholders to start something, say, 12 months earlier in somewhat of an informal fashion and then force them and become very formal, an NOI, PAD, draft scoping document, draft study plan, that's not very efficient or effective. And -- And -- And -- And I would -- I don't think you want to set up that kind of dynamic.

MR. CLEMENTS: Well, there's no intent on the part of the commission to force anyone to do anything before the NOI, apart from having the NOI and PAD ready.

MS. MILES: I think there is -- is -- contrary to that, the sense that it can be done within that time frame and -- and let's put our thinking caps on to how we can, and that, yes, there are going to be projects that will take longer but that doesn't need to be the norm. How can we do the majority of them within this statutory time frame?

MR. PADULA: And -- And I think that's -- that's the right way to approach it and -- and maybe the -- the thing to think about in having then set your

process about how you really think, and those projects can -- can behave and people can fit it in within that time frame, maybe get 'em to think about creating the opportunity for the exception when it's appropriate.

Maybe -- Maybe a process that allows an applicant maybe based on some level of consultation to come in and request the ability, say to issue the PAD before the NOI. Because -- Because -- Again, a lot -- a lot of this is just trying to deal with calendars and field seasons and the ability to start something three to six months earlier might mean the difference between gaining a field season to complete some important work.

MS. MILES: Interesting.

MR. CLEMENTS: You know, we're very aware that not every license applicant or not every license expires or not every NOI date falls at a convenient time during the year to do studies.

MR. NOE: But may -- may -- may I add one -- one thing? It's clear from -- from listening to this that one size does not fit all and I guess that's one of the reasons why I was talking about slippage because, obviously, the level of complexity for one project to the next, environmental impacts and intervenors and cooperators and so on varies a lot; doesn't it?

MR. WELCH: Yeah. Okay, we have about

25 minutes left. Our next topic is timing of 401 applications and as a corollary, interim milestone regarding the 401 process. I guess I look at Greg and Polly.

MR. MCMURRAY: I yield to Polly.

MS. MILES: Everyone's getting tired, I think.

MR. WELCH: Yeah.

MS. MILES: Including us.

MS. ZEHM: Well, actually, I just have a question, not an answer on this one. I'm -- I'm trying to build the three dimensional model out of your -- out of your time line here and I need to get my tinker toys out, I think, to do that, to really, sort of, put in -- in a more complex model where all the state pieces fit in, and I'm frankly still trying -- trying to figure that out.

So I guess my question, I don't know how many of them are left, but to the utilities, from their perspective, whether, you know, in Washington, in particular for me, of course -- is how do they see the states' 401 process as we currently do it, as they currently understand it? How do they see the timing, maybe both for 401 and SEPA as it's described in this process? Because I haven't a chance to interact with what the -- utilities from Washington to get their sense of how

this feels like it's going to work.

MR. WELCH: Any -- Anything else?

MS. MILES: Any takers?

MR. WELCH: One thing about the interim milestones, I think you brought this up earlier, and that's in regard to the process plan itself. We would hope that the 401 agency would sort of share that scoping -- that initial scoping meeting with us. We're developing a process plan and just say, okay, these are our milestones for getting the 401 done so we can just take them and -- and put them right into the process -- into one giant process plan, so not only FERC -- would -- FERC FDA milestones would be in there, but your milestones would be in there as -- as well as -- as sort of the whole, sort of, big picture thing.

Anything else? Okay, coordinating with little NEPA or state SEPAs. Once again, I look at --

MR. MCMURRAY: That was a place holder for Polly because she was --

MS. ZEHM: Again, this is, you know, part of -- part of what I'm trying to put in in the third dimension here is exactly what this looks like. I think there are definitely improvements here compared to the current processes where it appears to me that NEPA is starting earlier and that it looks like there's more -- a

more deliberate attempt to get NEPA. And, again, the way we want to do SEPA, SEPA done just a little bit earlier in the process so that it doesn't tie us up in the CZMA projects from being able to issue our 401s because we're not able to get SEPA done, so this looks like an improvement.

And I'm not ready to declare victory because I just need to look at this a little bit harder but it does look like there's progress in the right direction here and I really appreciate that.

So again, I'm interested from the utilities, who you -- are either gone or really, really quiet right now, kind of what their sense is because, you know, they have a different perspective than I do and are very knowledgeable about how these different parts fit together.

MR. WELCH: Anything else on this issue? Time frames, I don't know, we -- we kind of talked about that already. Maybe this is more specific to some of the -- the time frames that we have suggested in that flow chart on the back and then you -- you made a couple comments that -- about that. Does anybody else have any -- these little -- take a look at these -- some of these little numbers that on your little flow chart in here. We -- We're interested in knowing whether these are -- these

are realistic for you.

As Ann said, it was, you know, really difficult to sort of, you know, get all these things that needed to be done and, you know, we -- probably added these up about 150 times, and, you know, moved this around and moved that around and this is probably, kind of, the best suggestion that we could come up with, so we really want you to take a hard look at that. Does anybody have any -- anything on that? Polly.

MS. ZEHM: I'm a -- I'm just picking up here. I -- I just -- I just want to -- I just want to kind of echo something that Kristen said and -- and that is particularly where, you know, time frames are 15 days or 30 days. You know, frankly, this is not an ideal picture of the world, but frankly, we're not able to look at the site every day. We aren't able to track these things moment by moment, day by day, sometimes.

And having those very short time frames work is going to depend on effective way to notify the key participants who need to review and comment. We maybe have to find a less passive way to do that that still is possible within the limitations of your resources and the applicant's resources.

Because, again, you know, I know that some of the parts of the current procedures happen that

sometimes it takes us half the review period just to catch up with, you know, oh shoot, this is going on. I got to dial in. I got to get this done.

So if that -- If -- If that review period is compressed from something we were used to having 60 days to do to something significantly less than that, getting the -- getting it on the radar screen for the right people is going to be absolutely critical to success.

And, again, I don't have a perfect answer for how to do that and I'm not trying to get another entity to take responsibility for what my agency's supposed to do, but effective communication of what needs to be done when is very important, and if we have a process map with schedules that people are actually able to stay with, then we'll know when to anticipate things coming. But my experience with regulatory streamlining and trying to stick to permitting schedules is that often one party or another slips. We lose the window of opportunity with our key staff and a slippage of 15 days of somebody submitting something can mean I'm not going to have the right staff person available for another two months, so I think that's some of the real world struggle that's really going to affect the success here, so --

MR. WELCH: I don't know if you wanted

to say something. At one -- At one point we talked about -- let's not put any time frames in here at all and just say in the very beginning when we develop the process plan these are the steps that you have to do, you know, you tell -- you know, let the group decide what the time frame is depending on what -- a lot of the things you just mentioned. That's -- That's another idea that was -- that was floated around.

MS. MILES: If people have any suggestions in that area, I think it's a real big issue for the process. If there's any technology or ways to, I don't know, web sites or close ways to be in contact with people so you get what you need to comment on and you -- we don't waste time in the mail and those kinds of things, I think -- and -- and the time frames that are allotted, then you have that full amount of time to do your review. Let us know about that.

We talked about requiring web sites always for every project and they're sort of up to the minute to date, but we felt like that was a little burdensome -- could be a little burdensome on some people who may not have the capability to do that and could be costly, and in the end didn't.

I know the commission is -- is -- has gone a long ways on electronic filing and it's going to be

going even further. I -- You know, we're looking now at applications, filing them all on CDs or some electronic means. Those further cost and time considerations. Suggestions welcome.

MR. NOE: There are technologies that will help.

MR. WELCH: I'm sense -- I'm sensing an energy drop in the room. We -- We have quite a few --

MS. MILES: Except for Polly.

MR. WELCH: Except for Polly. Except for Cathy and Polly. Why don't we maybe -- I think a lot of people -- maybe some people who suggested these might not even be here at this time, so maybe instead of going one by one, we'll -- we'll -- we'll look at this little group right now and go ahead and liven things up a little bit. Just shout out what you want to talk about or we'll skip 'em all. No, I can't do that. Cyrus.

MR. NOE: I -- I would be happy to take out the document access thing, access to documents, because that's -- that's a separate issue and nobody's going to do anything about it here anyway so you're -- just scrub that and I only got five people that were interested in it and that's going bye-bye.

MR. PERNELA: I was one of those who was interested in it.

MR. WELCH: Too late. Too late.

MR. PERNELA: I was lucky I got five.

I was surprised I got that.

MR. WELCH: We can -- We can answer your questions about that maybe later.

MR. PERNELA: Yes, but I'd say on the issue, it's a huge issue, you know, right now for license -- for licensees and for the country as a whole on how we're going to relicense at the same time that you've got security constraints being put on every licensee by the DOE is real tough, as well.

MR. WELCH: And as -- As John mentioned earlier, we might have to do our homework on the critical energy infrastructure rules that just came out and that might help us.

MR. PERNELA: Because we -- We get into a bind where I also have security under rule 108, at the same time locking out the project, whereas here --

MS. ZEHM: We can't hear you.

MR. PERNELA: -- we have a provision for site tourists and all of that. There is a conflict here within the rights.

MR. MARTIN: John Martin, I'll yell.

MR. BLAIR: No, here.

MR. MARTIN: Okay, are you recording?

Are you recording? Okay, yeah, that's why I wanted to make sure. That's why you need this, because I'd yell otherwise. Just a process question. I wouldn't take anything out of any these lists because I think you might want to use these lists as kind of a process thing when you go to Sacramento, when you go to the other places. Add to, because this is the information that will help you perhaps define what needs to be discussed.

MR. WELCH: Oh -- Oh, no, we're not talking about throwing any lists away or anything. It's just --

MR. MARTIN: Well, somebody just deleted the one.

MR. WELCH: Well, that was -- that was Liz and she's since been reprimanded.

MR. MARTIN: Excellent.

MS. MOLLOY: It was also previously saved.

MR. WELCH: All right, any of these -- any of these --

MR. CLEMENTS: There's one thing I can get out of the way. Steve raised the -- the -- the transition provisions issue and there was some confusion as to when certain things apply. The idea is that the new process -- the far fly process -- begin to apply for

applications where the NOI is due three months after the -- the effective date -- pardon me -- the -- the issuance date of the rule.

The part we talked about earlier where we are adding some additional requirements, like, you know, project maximum hydraulic capacities and those sorts of things, those would apply for applications that are due three months after the final issuance date because there's -- those are things that we think an applicant could -- could quickly get an application in shape with respect to those things.

MR. WELCH: Okay.

MR. PERNELA: In the current process -- Lloyd Pernela from Puget Sound. In the current process, like on our -- one of our projects, we were engaged in the traditional and then elected to go with the ALP once we achieved consensus. Is that option still going to be open and we can then move from one process to the other?

MS. MILES: Interesting thought.

MR. CLEMENTS: I -- I -- I think there's a lot of practical difficulties. I -- I could see how you could be engaged in an ALP that for some reason or another kind of falls in on itself and then you -- you default back to the traditional process to the extent that

there's any time left. You would probably already have done as much or more than the traditional process already requires.

I have a hard time figuring out how you would start the traditional process and then move to the integrated process. I don't think you can do that. And -- But once you're in the integrated process, I'm having a hard time thinking how the commission would be inclined to let you go back to the traditional process. So I think once you get into the -- the integrated process, I -- I think, as a practical matter, you're probably going to be locked in.

MR. WELCH: John, what about those -- the provision, though, that if you wanted to use -- if you were in the traditional and you wanted to use some particular elements in the ILP, you could do that as long as you had consensus.

MR. CLEMENTS: Well, yeah, there -- there is that but it's -- it's not a substitution of everything for -- it's not just replacing the traditional process with the integrated. It's -- It's taking specific elements and applying them at -- as -- as it's proposed, it would only apply during first period consultation. The theory being that by the time you get into the second stage of consultation, it's -- it's kind of too late to

start, you know, building your own mix and match process, that there would be too many interests that would be prejudiced at that point.

MR. WELCH: Okay. I can probably address one of these really -- sorry, Allison, I beat you. I can probably take this one right here, amendment application, being an old compliance person myself.

The compliance regulations as far as capacity amendments are concerned, the requirement is to use section 4.38, in other words a three-stage consultation. That would not change. We didn't go back and touch any of the amendment regulations, although 4.38 has changed slightly in regards to dispute resolution, but -- so we -- we sort of made a change but it was an indirect change because we changed 4.38, but there's no change in, you know, what constitutes a capacity amendment or non-capacity amendment or nothing like that.

MR. CLEMENTS: More simply stated, I think our intent is that --

MR. WELCH: I thought that was pretty simple.

MR. CLEMENTS: Well, our intent is that the integrated process apply to license applications and not to amendments.

MR. WELCH: What he says.

MR. CLEMENTS: And not to exemptions.

MR. WELCH: Allison, did you have something?

MS. O'BRIEN: Allison O'Brien, Department of the Interior. Tim, I just was curious, what was the issue with the mandatory conditioning authority definition?

MR. WELCH: Mark --

MS. O'BRIEN: Yeah, Mark --

MR. WELCH: And Mark is not here. I talked to Mark about this. Mark's concern was -- let me see if I can get this right -- because the dispute resolution process is only for use by agencies with mandatory conditioning authority, and he was specifically thinking of the Fish and Wildlife Service with section 18, he was wondering -- so that means if I have to use the dispute resolution process for a study that might relate to fish passage, that means we declared right up front that we're going to prescribe? And I said no.

I said, you know, it would be part of your -- I mean, not prescribing, in my view, is a decision. So -- And if the studies help you make that decision, then that's part of your mandatory conditioning authority, not prescribing. That was his issue with that, and Nan's going to take issue with that.

MS. MILES: Good answer, Tim.

MS. NALDER: No, I'm not going to take
issue with that.

MR. WELCH: Okay. Let it go, John.

MS. NALDER: This -- This is sort of
an umbrella thing. I was looking at accountability
mechanisms and I think that that's an umbrella. That's an
overarching issue.

How are you going to have everybody
hold their feet to the fire and meet these deadlines given
all of the complexities and organizations and the mores of
different organizations and tribes?

What mechanism are you going to use to
bring about accountability or shall we just take it off
the list?

MS. MOLLOY: Nothing comes off the
list.

MS. MILES: Well, we didn't put
anything specific in the regulations but the idea is the
process is going to keep moving and it's best to jump on
the horse at the beginning.

I -- We talked -- A number of people
in their comments raised the issue of putting something
fixed in, some penalties for not participating or not
doing an adequate job of producing a preliminary

application document or something like that, and we just didn't do it. So I, you know -- I think it's a question of trying it and hopefully people will -- will participate. I don't know. I -- When I say it, it sounds a little naive but I guess I'm open to suggestions that you may have about that.

MS. JANOPPAUL: You know, it's -- it's our view that with -- with the commission being involved earlier and holding the scoping meetings and so on, this is going to take care of a lot of these issues of public involvement, of agency involvement, of things moving along where we're pretty optimistic with the commission being involved early that will bring more of a sense that something is happening, and -- and that, you know, we -- we find people sit up a lot more when commission staff are holding a meeting as opposed to when a licensee might be holding a meeting.

And -- And we're hoping that that will also -- I don't know if there's anybody still here for the tribes, but that will assist with the tribal matters, too. With FERC staff out there early, we're hoping that they also then have some kind of consultation with the tribes. And -- And so, you know, we -- we just see a lot of benefit to having commission staff there early and it just gives people a sense something's happening.

MS. NALDER: That is a very, very, very good point, Mona. This -- The -- The commission being there to hold that meeting makes a big difference.

MS. MILES: The other thing is it is a proceeding in the beginning. The proceeding --

MS. NALDER: Does this start a proceeding --

MS. MILES: Proceeding --

MS. NALDER: -- at the commission holding scoping?

MR. WELCH: Uh-huh.

MS. NALDER: Oh, that wasn't clear.

MS. MILES: The proceeding begins with the preliminary application, pre-application document at the NOI.

MS. NALDER: Okay.

MS. MILES: Now we're not requesting interventions -- purposefully not requesting interventions until after -- after the application is filed but it is a proceeding.

MR. CLEMENTS: And -- And we will issue a notice stating that a proceeding has been done.

MS. NALDER: And does that -- Are you going to address ex parte now again with that since you need ex parte for ALP? So start a proceeding, formal

proceeding earlier?

MS. MILES: We're not requesting interventions, though. That's what would trigger ex parte. We will have a fairness issue for sure.

MR. WELCH: Brett.

MS. SWIFT: I -- I guess just one question with regard to accountability mechanisms. Are you open to suggestions because I actually do see that there are accountability mechanisms in there for the agencies. You know, there are higher burdens for study requests if they haven't been involved. The commission will treat their rec -- their terms and conditions different if they are not, you know, filed in a timely manner.

And so I'm wondering if the commission is open to accountability mechanisms for other entities and, you know, you mentioned the pre-application document so I was thinking specifically of the applicant because we're trying to come up with suggestions in our comments but I'm wondering if you're just -- not close the door but if it's a -- really unlikely that -- that you'll want to include things like that.

MR. CLEMENTS: We're -- We're -- We're very aware of the issue and we look forward to comments.

MR. WELCH: Okay, any other issues in

this little group that jumps out at anybody that's burning here. Liz, is this -- is this -- is this the end here?

MR. CLEMENTS: Tim, can I go back to one thing?

MR. WELCH: Uh-huh.

MR. CLEMENTS: Just the last thing we were talking about and we were talking about it becoming a proceeding beginning when the NOI is filed and the commission is issuing notice that states that.

One of the things that's in the proposed rule in section 5.5 talking about that notice is a -- a statement that all communications to or from the commission staff related to the merits of the proceeding shall be placed in the record.

So we're treating it, you know, as this is the real thing. If you communicate concerning the -- the merits of this thing, then you'd have to have that in the record, so we're treating it, in effect, as though it were a contested proceeding at that point.

MS. NALDER: Where are you, John?

MR. CLEMENTS: It's on page D58, more specifically 5.5A6, I think -- pardon me -- A5. No, it's 5.5 A3 B5 point -- I'll just show it to you. Look on page D58.

MS. NALDER: That's ESA and -- and

Magnuson Fisheries Act.

MR. CLEMENTS: No, up at the top of the page, this is on part five --

MS. NALDER: Oh, a statement that all communications to -- that's there.

MR. CLEMENTS: There you go.

MS. NALDER: I'm in -- I'm in the wrong five. I'm in the wrong B, I guess.

MR. CLEMENTS: Is that -- Yeah, that -- so that -- that should allay some peoples' concerns, should allay everybody's concerns about unfair ex parte communications.

MS. NALDER: Okay.

MR. WELCH: We have about -- about another minute or so before 3:45. John.

MR. MARTIN: John Martin, B.L.M. Not to beat a dead horse but in regards to the one size fits all from the -- going through the packet -- the process, have you thought about maybe perhaps categorizing or cataloguing projects by size and by magnitude of issues and things like that and putting them in different categories and allowing different time frames for each set to go through so your smaller, your medium sized projects, your larger sized project versus the kind of issues that you're involved with, the -- the extremes of -- of issues

that are involved?

You know, it might be predominantly an area where it's private land, very small project, very small -- much shorter time frame for the process versus something that's got multi-agencies, public, private, everybody else's entities that got a foothold on it. Much larger pro -- time frame would -- would perhaps take place, so you might be able to do something of that nature.

MR. CLEMENTS: We're looking for suggestions there. In the comments that we got, however, we didn't have anything remotely like a consensus on what kinds of projects might qualify for something more streamlined.

So that the obvious one that jumps out is small project versus, you know, rapids or something like that. But we got a lot of comment from, in particular, state agencies and NGOs to the effect, and I think everybody would probably agree that the size of a project doesn't necessarily mean that the -- it has commiserate environmental effects.

You have to look at them individually and that's where the -- that's where the rub comes.

MR. MARTIN: That's true, but as a -- like a federal agency where we have maybe 50 or 20

projects, we can't do 'em all. We're going to let some kind of go by the wayside, unfortunately, but that's out of necessity. We just don't have the personnel to work through them all so we'll make some determinations or decisions based on that.

MR. CLEMENTS: We sort of treat every license application on its merits. That's as much as I can tell you at this point. But if -- If you can come up with, you know, sort of specific criteria that you think might make -- be good for categorizing projects that could be given a lighter regulatory end at -- at this application development stage, we'd love to hear those comments.

MR. WELCH: Hari.

MR. MODI: Hari Modi again. With respect to the selection of the process, is there a provision there that, say for example, you recommend to the applicant that the integrated process is the best and for whatever reasons the applicant feels that once we go with the traditional process? What is the procedure there for resolving that?

MR. CLEMENTS: Well, the procedure is that the applicant at the time it files the NOI will make its request with respect to the process that it wants to use and then there's a -- I can't off the top of my head

remember what provision it is, but then we would get comments that the applicant wanted to do something other than the -- the integrated process, and then within a very short time frame the office director would issue the decision and -- and then we're off to the races, you know, depending on which process gets selected, but that's the end of it.

MR. MODI: There is -- There is going to be a provision there?

MR. CLEMENTS: No, there's nothing in there for that. Well, yeah, but you understand that the ILP is the default, the integrated process?

MR. MODI: Yes.

MR. CLEMENTS: Okay.

MR. MODI: You -- That was made clear earlier, but I'm talking about the selection of the process is that once the commission makes its determination that for this type of application we should be able to do the integrated process, what is the procedure for the applicant to persuade the commission that it should be the --

MR. CLEMENTS: There is no additional opportunity. You get that one chance to persuade the commission and then we -- you know, the decision is made and -- and we go about our business.

MR. WELCH: Okay, one fine -- any --
one final wrap up with this list, any burning issues
before we, sort of, give time for some summaries and wrap
up here at the end, so --

Okay, we have a couple of things to do
during this remaining ten minutes that we have, a summary
of some of the issues and the solutions that we talked
about. I probably had a really good discussion about the
draft application. I heard some good ideas from -- from
Steve and some other folks about that. That's something
that I'm definitely going to take home with me. Ann, do
you have any, sort of, summarizing words of wisdom for us?

MS. MILES: No, I thought it was good
to hear all the -- It's good for us to hear what questions
you have because that helps us hone in on places that are
obviously of concern to you and that's what we're looking
at is to try to figure out what those are. I think this
list helps us get there.

I think the next step is really to see
if we can look for some solutions in those areas that a
lot of people might agree to, so I would encourage you to
talk among yourselves, you know, not just within your own
agency. But like Polly said, she'd like some feedback
from industry on -- on your thoughts on -- on how this
integrates the 401, so feel free to -- or I would

encourage you to do that kind of thing and to come to the drafting sessions in Washington, if at all possible.

MR. WELCH: Anyone else on the panel, any closing comments?

MR. CLEMENTS: Just like to thank everybody for coming and I thought this -- this actually went very, very well. I thought we had a really good discussion and it was focused, which is the thing that we were really looking for. We didn't want people to come here and just, sort of, get up and make speeches and we wanted people to focus on what's in the proposal and what they like and don't like and how we could change it and that's exactly what we got. So I'd -- I'd like to thank all of you folks for helping us.

MR. WELCH: And sticking around.

MR. GRIFFIN: Ditto, and someone earlier had asked for our information and I -- I left some cards up here if anyone wants contact information. Maybe you guys could leave a couple, too.

MR. WELCH: A couple -- Just a couple more things from me. Number one, we have to conduct this meeting five more times. You're -- You're the first ones, so if afterwards -- let us know if there's something that we can do a little bit different. We'd -- We'd like your input on, sort of, the process that we used today. Sort

of borrowed that from -- from our pre-NOPR meetings and we'd like to hear a little bit about that privately or you can call us or -- or -- or whatever.

The second thing is about the sign-up list; right, John? We're going to post that on our web site. Keep watching our web site because as the transcripts from these meetings come in, they'll be posted on our web site and we'll have, like, a table of all the -- all the meetings and you'll be able to click and get the transcript and you'll also be able to click and get the list of participants if you want to remember who was here. John, did you have another thing?

MR. BLAIR: If anyone -- If anyone had formal remarks they wanted to enter into the record.

MR. WELCH: Yes, now is your time to read -- read things to Mary, or as I said, if you have something prepared, you can go ahead and give it to Mary. Is there anybody who -- No?

MS. JANOPAUL: No, I -- I -- I just wanted to say, I know a lot of people left, but also, I know at least one or two people came in. If you did not sign up on the sign-up list, please do so.

I also want to point out that although nobody from Department of Interior was able to -- to come from D.C. for this, Interior has been very active. I --

You know, I see now a couple of people in the back row, Allison, so if you have any particular questions about the Department of Interior.

Also, in the pre-NOPR notice, I know there was -- there were contacts given for all members of the interagency hydropower committee and there was one there for Interior. So, Allison, I -- I don't know if you have any particular advice, or Mel, on -- on who to contact if you want to find out Interior's positions or interests.

MR. WELCH: Just ask Allison. She knows about all --

MS. JANOPPAUL: Yeah, Allison knows everything.

MS. O'BRIEN: I think David Diamond is a good contact.

MS. JANOPPAUL: Okay.

MR. WELCH: Okay, anything else?

Thank you very much, everybody.

(Whereupon, the meeting was concluded at 4:00 p.m.)

.
. .
. .
. .

CERTIFICATE

.

I, Mary T. Jacks, do hereby certify that

pursuant to the Rules of Civil Procedure, the witness

named herein appeared before me at the time and place set

forth in the caption herein; that at the said time and

place, I reported in stenotype all testimony adduced and

other oral proceedings had in the foregoing matter; and

that the foregoing transcript pages constitute a full,

true and correct record of such testimony adduced and oral

proceeding had and of the whole thereof.

.

IN WITNESS HEREOF, I have hereunto set my hand

this 21st day of March, 2003.

.

.

.

Signature Expiration Date

.

.

.

.

.

.