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FEDERAL ENERGY REGULATORY COMMISSION

Docket No. RM02-16-000

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Public & Tribal Post-NOPR

Regional Workshops

Marriott Charlotte City Center

100 West Trade Street

Charlotte, North Carolina

Thursday,

March 27, 2003

The above-titled matter commenced at 9:20 a.m.

Reported by: Deirdre Miller, RPR

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

PANEL MEMBERS:

S. Ronald McKitrick, FERC

Ann Miles, FERC

Mona Janopaul, U.S. Forest Service

Liz Molloy, FERC

Patti Leppert, FERC

P R O C E E D I N G S

MR. McKITRICK: Good morning. My name is Ron McKitrick. I'm staff with the Federal Energy Regulatory Commission, Office of Energy Projects, and I work out of Atlanta, Georgia, and I welcome you to the Post-NOPR workshop in Charlotte. Hopefully -- from the faces, I recognize everyone, so you must be in the right place. I would like to just before we kind of get started in things tell just some housekeeping types of items. There are restrooms out this door through the next door; go towards the elevators, and to the left of the elevators there's a big sign that says "Restrooms and Telephones". I'll tell you right now there's only two telephones if you need those, and they do not work with change, they'll only take credit cards or calling cards. The -- and we'll be taking some breaks or you can leave if you need to.

Real quickly, why we are here is primarily we want to hear what you have to tell us about what you've gone through reading the NOPR, any concerns you may have about the proposed rule, and we'd like to hear those. Just as important, we would like to see -- particularly with the small group that we have here today -- generate some discussion, maybe even working through some of those concerns that you may have and finding some solutions. Hopefully everyone had a chance to pick up I'd like to say

a handout but I think this is probably a book, that everybody's had a chance to pick up.

I'd like to spend just a couple minutes going through the agenda, page A-1, just so that you know what to expect. We're going through the introductions right now. Ann Miles will go through the slide presentation telling you a little bit about the proposed rule, some high points of that, and then there will be a chance for questions dealing with those slides, any clarifications or understanding that you would like to have dealing with the presentation, have a short break, come back and we'll start really your part, the interesting part of this, what are your concerns, what are the issues that you've seen in the NOPR that you would like to have a chance to discuss.

So we'll take those, prioritize those, what is the most important. Depending upon the time that all this takes, probably break for lunch around noon and then come back and start the discussion of the issues that you have identified and as we have prioritized those, take the time that we need to do that. When we're finished with that discussion, any kind of solutions that we've come up with, if there's anyone that would like to read anything into the record, that will be at the end of the day; any kind of prepared statements could be given to the court reporter, or if you wanted to present those you'd

certainly have that opportunity. But that will be the last thing we'll do. And again, we have the room until around 4:00.

I'd like to spend just a couple seconds -- first of all, we have a panel up here that will be helping out, let them introduce themselves. And then I think since we've got such a small group why don't we just go around the table, I think there's a mike up here, just pass that around, introduce yourself and who you're with so that everybody knows everyone.

MS. MILES: I'm Ann Miles with FERC in the Washington office and doing Hydro Licensing.

MS. JANOPAUL: Mona Janopaul, Forest Service, D.C.

MS. MOLLOY: I'm Liz Molloy at FERC, and I was appointed as a tribal liaison for this meeting.

MR. SLOANE: I'm Gordon Sloane, U.S. Forest Service, stationed in Charleston, South Carolina, attached to the Washington office.

MR. GARDNER: Joel Gardner, Forest Service in the Atlanta office; I'm the [inaudible] coordinator.

MR. BRYANT: Ron Bryant, Catawba Riverkeeper Foundation in Charlotte.

MR. JOBSIS: I'm Gerrit Jobsis, I work with South Carolina Coastal Conservation League in Columbia,

South Carolina.

MR. MARTIN: I'm George Martin with Georgia Power.

MR. LAYMAN: I'm Steve Layman with GeoSyntec Consultants in Atlanta.

MR. MOORE: David Moore with Troutman Sanders.

MS. CASON: Jody Cason with Long View Associates.

MR. ELLIS: Gene Ellis, Alcoa Power Generating.

MR. PHILLIPS: I'm Jim Phillips, Chattahoochee Riverkeeper from Columbus, Georgia.

MR. FLETCHER: Good morning, I'm Scott Fletcher with Framatome ANP here in Charlotte.

MR. OAKLEY: I'm Mark Oakley with Duke Power in Charlotte.

MR. LINEBERGER: Jeff Lineberger with Duke Power.

MR. LUCAS: Phil Lucas, Progress Energy.

MR. STUART: Alan Stuart, Kleinschmidt Associates.

MR. HANCOCK: Jim Hancock with Balch & Bingham.

MR. BERG: Mel Berg, Bureau of Land Management, Washington, D.C.

MR. McKITRICK: There's one other person from the FERC that's with us, Patti Leppert. She'll be helping

particularly this afternoon -- this was a good practice for everyone. This is going to be recorded, we have a court reporter, so when we get into the discussion this afternoon or if there is any questions dealing with clarification, I would appreciate waving your hand, Patti will find you with the mike, give your name and who you're with again so that we have that on the record, and we'll hopefully be able to get a complete record that way and have the issues identified that you brought to us.

MS. MILES: Good morning. It's nice to be here. I'm going to cover three topics in this Power Point. The first is the chronology of events for the rulemaking, sort of where we've been and what we've still got left to do. The second is the content of the NOPR and overview of what's in there. And the third is questions that FERC staff and the commissioners asked about this rule.

We believe that there's a lot of agreement about what is in this rule from the various constituencies. There was a lot that went into the ideas that are in here that came out of work that other groups had done, our pre-NOPR workshops and your comments on the rule. What we really want to do today is to hear the parts that bother you. We know there are certainly some parts in there that don't work for everyone and we'd like

to understand what those are, why you're feeling that way, and see if there's some resolutions for those issues.

Okay. Our goal in this rulemaking was that it be as open and inclusive as possible and collaborative where we could arrange that. We started in September with a public notice and that set the stage for a series of regional workshops followed by a drafting session. At those workshops we gathered info about what licensing process -- what you-all thought the licensing process should look like, and then at the drafting sessions we put those, your thoughts, into concepts. You'll see many of those concepts in the NOPR that was issued.

After the drafting session we then worked with the federal agencies -- interior, commerce and agriculture -- spent about a month drafting language for this NOPR. We did that in this case because of the unique role many of the agencies play in their mandatory conditioning authority and wanting to mesh what they needed for that process into what FERC was doing for its process.

After we worked with the federal agencies then FERC staff worked on their own with the commissioners and we came out with issuing the rule on February 20th, the proposed rule. What we're doing now is a series of post-NOPR workshops; we've been in Portland, Oregon, and

Sacramento, California, and we still have to go after Charlotte to Manchester, New Hampshire, and Milwaukee. After that there will be a meeting on April 10th in Washington, D.C. Our intentions for that meeting are to sort of summarize what we've heard at these regional workshops and have more opportunity to discuss that. The regional forums will be followed by a four day drafting session, that's April 29th through May 2nd. We are hoping to really get down to the nitty-gritty of changes to this -- to the language of this NOPR to see if we can come up with some solutions that may suit everyone. After that we'll again work with the federal agencies on putting together a draft final rule. Commission staff will then work on their own to finalize it and then get it to the commission. As it stands right now we're scheduled for the last commission agenda meeting in July to issue this rule.

Okay. What's in the NOPR? There are two major things that it does. One, it creates this new process, the Integrated Licensing Process, or the ILP; and the second, it makes some changes to the Traditional Process. One of the goals to the Integrated Process is that we stay within the statutory time frame of three years before the application -- five years before the application -- five years before the license expires, that's the point at

which the process begins. So -- and within that three years before the application has to be filed we've sort of worked out a one year "get your group together, figure out how you're going to work together, figure out what studies are needed, what are the issues, identify those, get your process going" and then allotted about two years for actually doing studies.

Then the application would be filed, I think as everyone knows it has to be in two years before the license expires. And our hope is that we would be issuing licenses with such front-loading, certainly by the time the license expires but perhaps even earlier than that, around 1-1/2 years.

The changes to the Traditional Process are mainly increased public participation and early study dispute resolution. One of the things -- one of the big issues that we find with getting a relicense issued timely is that the studies aren't done early enough in the process, that they may drag things out, the need for additional information after the application is filed may be extended. So one of the real goals here was to get people where there are disagreements over studies in the prefiling time, the time before the application is filed, to sit down and work out those disagreements, and if they can't then to come to the commission and the commission

will make a decision on that.

Okay. I want to go through the Integrated Licensing Process. Our goal is twofold; one, that it improves efficiency for everyone, that we're using our time and any money wisely; and the second is timeliness, that we do improve the length of time that it takes to process an application.

For efficiency, one of the things that we've done is to try to merge things that now are done in the Traditional Process sequentially and have them down simultaneously. So that means moving the NEPA scoping into the prefiling time. NEPA scoping, the point of it is to identify issues, so let's identify those issues up-front along with the application preparation. We also think that it will be useful to coordinate the FERC licensing needs with the needs of any other agency that needs to issue permits, do NEPA documents, those type of things, so they're done together. And we've also increased public participation.

As far as timeliness, we've heard from a lot of people that they would like FERC staff involved from the beginning so we are proposing in this NOPR to have early FERC staff assistance. We also are proposing development of what we're calling a process plan; and the idea here is what I said before about other agencies -- state, federal,

tribes, NGOs -- whatever needs to be done that that's laid on the table early and everyone knows what processes people have to go through. And then we set a schedule for how those are all going to work, and it's a schedule for FERC staff. A lot of people said "FERC, you need to be accountable to a schedule also", so we would as well as others.

And then probably the biggest part of the whole rule is the study plan development and the both informal and formal dispute resolution process. The way it will work is the applicant will develop a study plan, it will be issued as a part of the scoping document with opportunities for comments from everyone, and then applicants finalizing it and the commission actually issuing -- or commission staff actually issuing an order on that study plan. If the federal agencies object -- or the mandatory conditioning agencies -- it could also be the 401 agency as well as any federal agency with mandatory conditioning authority -- objects, they would have the opportunity to use this formal dispute resolution process. And I'm going to talk more about that in a few minutes.

This is what we're hoping with time frames, and you can see that it really illustrates a pretty significant reduction in the amount of time it takes to

process an application. The zero on here represents when the application is filed, and 24 represents when the application -- when the license expires. That's the two-year time frame. With the Traditional Process, the reality of what's happening right now is that we've got a median processing time of about 47 months. With the Integrated Process -- and this is an estimate, but it's based somewhat on our experience with those who have used the Alternative Licensing Process where the average time frame for processing is around 17 months, here we think it will be just about the same. But I can tell you our goal is really that we're able to -- that the commission is able to act on the license application by the time it expires, by that 24 month period, and not have to issue any annual licenses.

I want to go through a few of other significant parts of the NOPR and I'm going to just list them and then I'm going to go into each one.

Process selection, there are three processes and how you would select one. The cooperator/intervenor policy. We've added some things on tribal consultation. We've added an advance notice of license expiration and something called a Pre-Application Document. I want to give you a little more detail on study dispute resolution and the application contents.

So let's start with the process selection. There are three processes proposed here, the Integrated, the Traditional, and the Alternative. So we've kept the Traditional, Alternative, and we've added the Integrated. We've made the Integrated the default. So if a licensee would choose to use either the Traditional or the Alternative, they would need to come to FERC at the time they file their Notice of Intent and say "this is what we want to use, we want to use the Traditional, we want to use the Alternative, and this is why". And that would be noticed for comment from everyone and then the commission would make a decision on whether that works in this case or it doesn't.

The cooperating agency/intervenor, this is a change to our current policy. I think most of you know that the current policy is that if an agency chooses to cooperate with us in preparing an environmental document they are not also allowed to then later intervene in the process. We are proposing to change that here for federal agencies so that FERC would permit a cooperating agency to then intervene in the process. We realize that there's some concerns about fairness with this, and so we have also proposed to modify the ex parte rule so that anything that's discussed between FERC and that cooperating agency that might lay new study information on the table or new

data would need to be served on everyone, made available to everyone. That wouldn't include just discussions about the content of the NEPA document that had to do with information that's already available, because the NEPA document will be published; the sense is that all of that will be available when the NEPA document is published.

Tribal consultation. Our idea is to enhance our consultation, and we've added two pretty important steps here. One would be that the commission staff would initiate consultation with the tribes before the Notice of Intent is filed; so very, very early on in the process. We would go out there and see what tribes have the potential to be involved in a particular project, talk with them about what process they would like -- how they'd like to work with us, help them understand the FERC process if they're not familiar with it, and help us understand them.

Part of how we expect to do this is through this position, the tribal liaison position, that's proposed to be created here in the rule. It would be a permanent position and it would deal with any tribal issues that folks might have with the commission, that the tribal -- tribes might have with the commission. It's pretty undefined. You can see we didn't tell you what it's going to be in here, and we're really looking for

comments from you and from the tribes. We'll be having a meeting with the tribes tomorrow which you're also welcome to attend, it's open to everyone, but it is specifically for the tribes.

Okay. The next thing, advance notification of the license expiration. We didn't write this into the reg itself; our intention is that this would be our practice and that it would be the practice for all projects coming up for relicensing. What we would do is notify the licensees some amount of time before the Notice of Intent is due; and we haven't fixed at what time that would be yet, so if you've got comments on that, that would be helpful. I'm sure many of you are very well aware of when your license expires, but you might be surprised that there are some smaller licensees that really don't know; and so for them I think it will be a great help. But there will be other information in this letter that I think will be of great help for everyone. And it's things like: what is required in the Preliminary Application Document -- that's what the PAD stands for, Preliminary Application Document; how to go about the process selection; who you might consult with. I think there are a few other things in the rule on that, in the NOPR on that. Suggestions from you on if you've got other things that would be useful in that letter, let us know about

that.

Okay. What's in the Pre-Application Document. The idea here is that this would replace what's now the initial consultation document or initial consultation package. Much of the information is similar. I think it's expanded a bit and the format of it is a bit different. One of the things that we're hoping is that we'll start at the beginning with this Pre-Application Document and things will be done in the form of a NEPA document or that sort of structure where it's issue identification, analysis, results. At this point we don't expect much more than "this is what we know about the resource" and "these may be the issues". There is no expectation that you'd have any analysis or anything yet; but if we can at least get out available to everyone information that everyone has, information that licensees have, information that agencies may have, early on we think that will be very useful.

Also -- but the idea is that this Preliminary Application Document would provide the basis for this issue identification I had talked about and for folks to look at what you need for study requests and then for the NEPA scoping document also. We are also interested in your thoughts on whether we've captured the appropriate information that will be useful to everyone in this

document. Is it too much? Is it too little? Should it be different?

Okay. Study dispute resolution. I want to get my book. One second. On the back of your yellow book is a flowchart and we'll probably be using this today. This is the Integrated Licensing Process flowchart, and I'm going to point out to you where the study dispute resolution processes are in relation to the boxes. And you can see in the lower right-hand corner the boxes are numbered and then in the lower left-hand corner it refers you to the point in the regulation for each of these steps. We thought we were pretty organized with this, I have to tell you. The study dispute resolution was a really hot topic at the pre-NOPR meetings and we got a lot of comments on it. We tried to capture a lot of what we heard from folks, but there's an area where there's some definite differing opinions so we hope we'll be talking about it today.

We think that everyone agrees that studies can be one of the most expensive and time consuming aspects of relicensing and that if we can resolve things up-front it should make it easier. One of the things that we added in this reg is a list of study plan criteria, so it would be both for the applicants proposing the studies and for agencies proposing studies; and it's to put some

parameters on what is an appropriate study. So there are things in there like: What are the goals and objectives of the study? What is the connection of the study needs to the project effects? What's the relation to the resource management goals? What's the consideration of cost impracticality? This is another area where we'd like feedback, if you think we've captured the appropriate criteria for study plan.

Now the steps, if you look on the flowchart at box 6, that's when the applicant files the draft study plan for comment by everyone including FERC staff. And then you go to box 9, this is where we're in the informal study dispute resolution process, and this meeting is an enhancement -- we are thinking of it as an enhancement to the dispute resolution process that's in the Traditional Process, and the idea is that let's see if people can iron out through discussion study needs. Then in box 10 the applicant, after having heard the discussion, would file a revised study plan with the commission; and in box 11 the commission would approve it.

If the mandatory conditioning agency have some objection to one of the studies, in box 12(b) they can then note that study dispute to the commission. If that happens, then FERC would convene a panel and the panel would consist of someone from FERC staff who's not working

on that particular project but does have a specialty in the resource area of the study that's in dispute; someone from the resource agency staff, same thing; and then a third-party neutral. And the idea with that will be that FERC would keep a list of third-party neutrals; folks would apply to be on that list and there would be some sort of process to set that up and be sure folks are qualified to participate or whatever. The panel would meet and then make a recommendation, and that recommendation -- oh, when the panel meets, the applicant also has the opportunity to provide comments to the panel or any information that they think would be available or that they would like available to the panel. Also the panel will have available to them everything that's already been filed in the case. What the panel is doing is making a finding on whether the study meets the study criteria; that's the weather vane for measuring that dispute. And then they provide their finding to the FERC director of energy projects and he makes a decision. This whole panel dispute resolution process occurs in a fairly short time frame, it's like 70 days.

Application content. There are some changes in this NOPR that are not in the ILP to other parts of the regulations, and what we did was to ask FERC staff what things do they routinely ask in additional information

that we really should instead have in the regulations and a part of what's filed with the commission. There's a number of things in there; two of them up here are just examples, but there are other things in there. The ones we put up for examples are minimum/maximum hydraulic capacity. I think we -- we only ask for one or the other and not both now, so now we'd be asking for both. And cost to develop the license application.

Another thing is project boundary information. I think you all know probably right now there isn't a requirement for project boundary on minors and so this rule does change that and require a project boundary for all applications.

Application content. For the Integrated Licensing Process the Exhibit E is now in the form of a NEPA document. Much of the information is the same but we're asking for it in a different format. The idea here is we'd like it to easily be able to be converted into an environmental document. And also I think a lot of people think about issues in kind of this logical order of what's the existing environment, what's the effects of the project, what are the proposed measures, what's left with unavoidable adverse impacts. So that's the way the Exhibit E is now structured. We also have a developmental analysis, what are the costs of these measures, how do

they affect generation, how do they affect project economics.

Lastly I want to turn to some questions on the proposed rule. They are scattered throughout the preamble, but we did pull them all together in an appendix to the NOPR that references where the question is in the NOPR. These are things that we felt we really wanted more comments and information from you-all about, but we also don't want you to feel constrained that this is the only things you can comment about. We are open to any other place that you would like to give us comments on the NOPR. I'm just going to real quickly go through our questions, and I'll give you a bit of an idea for moving into the next section which is identifying issues of concern to you.

First one: Are the contents of the Pre-Application Document appropriate? Second: What if any criteria should be considered in determining the use of the Traditional Licensing Process? I want to say a little bit about this. We didn't change anything in the Alternative process, so it has the same requirements to get your group together, come up with a communications protocol, get consensus among the major parties before coming to FERC with a request to use it. For the use of the Traditional, we didn't put any specific criteria or

particular projects that would be suited to that; it simply says "good cause" in the reg.

The next one: Are the proposed study criteria adequate? We already talked about that one.

What modifications, if any, should be made to the study dispute resolution process?

Should the resource agencies provide preliminary recommendations and conditions prior to the draft or final license application? Right now the ILP process has resource agencies providing preliminary conditions when we issue the notice that the application is ready for environmental analysis.

Are the recommended time frames associated with the proposed Integrated Process adequate?

Is a draft license application necessary? There was some discussion at the drafting sessions, the pre-NOPR drafting sessions, on perhaps we don't need a draft license application, the draft application and the final occur very close to one another; or maybe it shouldn't be quite as comprehensive, maybe you don't need all the figures in the draft as you do in the final. Some discussion on that would be helpful.

Are the recommended deadlines for filing the 401 Water Quality Certificate appropriate? The way it is in the NOPR it's got the 401 application required at the

time the application is filed for the Integrated Process and the Alternative process. The Traditional has it at the time of ready for environmental analysis. And the thinking with that was that for both Alternative and Integrated the studies are all so front-loaded that there should be adequate information when the application is filed to be able to apply for the 401.

And the last -- not quite the last one, next to last one. Are there any suggestions on how the regulations could be modified further to accommodate small projects?

And then a couple questions dealing with tribal resources. Is the proposal for early contact with Indian tribes adequate to ensure improved tribal consultation?

And what recommendations are there regarding the roles and responsibilities of the proposed FERC tribal liaison?

Okay. That's the Power Point presentation. And the next thing we would like to do is to take any questions that you have, clarifications on what I said here or anything that's in the NOPR. We don't want to move yet to issue identification, we'll do that next. This is clarification questions. Yes?

MR. LAYMAN: My name is Steve Layman, GeoSyntec Consultants. I just have a question about comment due

date in the NOPR. It says April 21st on the first page, and then back later in the back it says a 60 day period. I don't know if you are aware of that or not or if there's an inconsistency or not. Back on page 14016 under Public Comment Procedures it says "the commission must receive all such comments no later than 60 days after issuance of this proposed rule". So I don't know if that affects your --

MS. MILES: What page are you on where it says the 60 days? The comment due date is April 21st.

MR. LAYMAN: Section VII of the NOPR, Public Comment Procedures, on page 14016, identifies 60 day period --

MS. MILES: Is that the Federal Register Notice?

MR. LAYMAN: Yes.

MS. MILES: Okay. It says 60 days. I haven't counted 60 days after issuance of the notice. It was issued February 20th. I'm assuming they are very close to one another, but we actually need to count that out and see if we've got an issue. April 21st is the deadline we're going by. If we've got a problem with that, I think we may issue a notice.

MS. JANOPAUL: It is counted out, it is the following weekend.

MS. MILES: Is it April 21st?

MS. JANOPAUL: Yes.

MS. MILES: Okay. Then they're one and the same.

MR. LAYMAN: I was just assuming from this publication date that --

MS. MILES: No, it says from the issuance date of the NOPR.

MR. LAYMAN: Okay.

MR. BRYANT: Ron Bryant, Catawba Riverkeeper Foundation. This is a general question and it's not in my purview, but it did jump out at me. For the tribal meeting tomorrow is FERC aware that there are two groups that are sort of in conflict in the Catawba nation and do you really need to have both of them represented here?

MS. MOLLOY: To a certain extent -- I mean, we're having a meeting and who shows up shows up. You know, I don't know if your question is did we seek to have them both or are we -- you know, we're not entirely controlling that. You know, I'm not sure --

MS. MILES: I think we would hope that everyone would come, but that's not under our control.

MS. CASON: Hi, Jody Cason with Long View Associates. I'd like some clarification on the applicability of the proposed rulemaking and the final

rulemaking to licensees. It's my understanding that your plans are to issue the final rule in July and then it would I guess apply to those NOIs due three months later somewhere at the end of the October. So clarification on that, if my understanding is correct. And then the proposed changes to the application content, would that -- would that same implementation date apply to those licensees?

MS. MILES: Okay. Your first question, you're correct, for the ILP the transition provision is that it would apply -- assuming the rule is issued in July it would apply to projects where the NOI is due three months after that which will be October. For application content, if it's not the ILP itself that applies to applications that are filed three months after the rule is issued. So again that would be applications that are filed after October of 2003, the application content would apply to them, the changes like project boundary, maximum/minimum, those things that I brought up, yeah. Yeah.

MR. JOBSIS: I'm Gerrit Jobsis. The Pre-Application Document, the PAD, you kind of laid out some of the information that would be similar to what you're putting now in an ICD. What sort of enforcement mechanisms are there going to be to make sure that the PAD

does contain sufficient information and what would be the consequences of having an insufficient PAD?

MS. MILES: You brought up an issue that's raised a lot of -- we've heard at both of the other workshops. I guess a couple of things. One is FERC staff will be there and hopefully everyone else will be there so that if it doesn't have the information in it that everyone needs that we'll be commenting on that. We'll then be going to scoping, that is in box 4; that will be a FERC scoping meeting with issue identification, information identification; if information is missing at that point, that would be a good opportunity to discuss that. We didn't put in any strict enforcement measures in the regulation. I guess the ultimate sort of enforcement is a deficient application once the application is filed. But our hope is that there's lots of steps here where information is available, there's opportunity for comment, and then there are meetings where everyone can discuss it and that that will be sufficient.

MS. JANOPAUL: Mona Janopaul with the Forest Service. It's kind of going to your question and Jody's. I just wanted to restate that this new form, this Pre-Application Document, PAD, is supposed to be for all licensing processes. And with your question coming up, that is why the resource agencies have been also

discussing something that's been prevalent in comments for this rule, the need for early involvement of FERC staff in all processes; and that would give [inaudible] another thing for the Traditional Licensing Process. So just additional follow-up on what we're discussing at the resource agency in looking at "well, okay, if you make these changes to the Traditional Licensing Process like the PAD or study dispute, you really need early FERC involvement in that as well". So that's the way I tie those two together.

MR. HANCOCK: I'm Jim Hancock with Balch & Bingham. I think I was going to say a few minutes ago that it's the commission's intent in their proposed regulation not to change the ALP but there is a new requirement and I guess the burden, I would see it, on licensees to establish good cause before the commission will allow an applicant to use the ALP. Right now the regulation says that as long as the applicant can demonstrate that there's a consensus -- and I think there's a requirement that there be a communications protocol -- the license applicant can use the ALP. Is it the commission's intention that if that demonstration of consensus is made, is that enough to establish good cause? And if so, could that be clarified?

MS. MILES: Yes, that is the intention, and if

it doesn't read that way then we need to change the language. And your suggestions about how that might be clear would be useful.

MS. JANOPAUL: Jim, are you also then proposing that would be the criteria for using the Traditional Licensing Process in the future?

MR. HANCOCK: No, I don't think so.

MS. MILES: Other clarifications?

MR. JOBSIS: I've got another question. I'm Gerrit Jobsis. The dispute resolution process that you're envisioning, I guess in the document here it talks about it only being for resource agencies; and then in the back, on that chart, about it only being for those who have mandatory conditioning authority. Where does the -- how do you do dispute resolutions for those issues that are not related to mandatory conditioning agencies? A lot of our issues such as end-stream flow issues are often the studies that are most disputed and are often -- there's not a mandatory conditioning agency that's involved in those discussions.

And secondly, you know, how does the public have a role in dispute resolution? Certain parts of the country, I guess where you were last in Sacramento, there's a very active state involvement in the relicensing process. But in the Southeast often it's up to the public

to be engaged in the relicensing process because the agencies don't get involved, especially the certifying state agency doesn't get involved, until late in the process. How does the public have a role in the dispute resolution process?

MS. MILES: Okay. The idea with this ILP is that the public would be involved from the very beginning, that the applicants would reach out to them, in box 1.

MR. JOBSIS: Right.

MS. MILES: And they would have the opportunity to comment, to participate in meetings, full participation throughout. When you get to the study dispute resolution, the first part of that, which is boxes 6 to 11, is the opportunity for the nonmandatory agencies and the public to resolve their study requests. What's going on there and how we're looking at this is this is an enhancement to what's in the Traditional which doesn't allow the opportunity for the public really to come in at all. So that the applicant in box 6 is providing a draft study plan. In box 7 the commission is issuing a scoping document and it includes that study plan as an appendix. That goes out for comment and everyone comments there; so it's public, it's the nonmandatory agencies, it's the tribes.

And one thing with this Integrated Licensing

Process, it is a procedure from box 1. We are not asking for interventions until after the application is filed, but all this information is on the record. Then there's a study plan meeting, so it's opportunity for discussion; public should be there hopefully, anyone who has concerns that the applicant isn't proposing to do studies that they think are needed, that's an opportunity for discussion. FERC staff will be there. Then in box 10 the applicant has an opportunity to revise the study based on -- study plan based on what they heard at the meeting, any comments that they got. And then in box 11 that's the commission issuing a study plan, and it's based on all the information that's already in the record.

So that -- those boxes are the opportunity for the nonmandatory agencies, tribes, and public to get their requests for studies or concerns about the study plan out and before licensees, other constituents participating in the process, and FERC.

MR. JOBSIS: Right. But if we get to that point -- let's say that the state Water Quality Agency is not involved but there is an important water quality issue, there's no opportunity for -- that's not being addressed in the study plan, there's no opportunity for the public or for a nonconditioning agency to enter the formal dispute resolution process?

MS. MILES: That's right.

MS. JANOPAUL: Mona Janopaul, Forest Services. You might want to take a look in the preamble around I think paragraph 86 which in this book is on page C-38. Right around there it explains the conditions reasoning. I want to tell you, this certainly was a hot topic in the prior meetings, who should have access to formal dispute, why it was just mandatory conditioning agencies. I think particularly if you look through those paragraphs that's where the commission has been a little bit more erudite about why they did that. But I certainly think if you'd like to discuss it further this afternoon it would be good.

MS. MILES: Anything else?

MR. BRYANT: Congratulations on the flowchart. I think it's great.

MR. PHILLIPS: Thank you. Jim Phillips, Chattahoochee River. I just have a question about definition revision. You refer in your presentation to the slide questions you make a comment "to accommodate small projects". I'm new to all this. Is there a definition of a small project that is specific?

MS. MILES: I don't think there's a specific definition. I mean, there's a definition with majors and minors that's in the regulations, but we were using a very

generic "small" here. Over half of our projects are under 5 megawatts. A lot of people think that's pretty small. There are some that are 20 kilowatts; I mean, they're tiny projects. And I think we were thinking more of the quite small ones who don't have much experience working with FERC and don't have a lot of resources and it's a real struggle for them to go through these regulations. One of the things about small projects -- and we did talk about this, we talked about whether there should be something special for small projects and ended up with any of these regulations can be waived to suit the project; and if you've got one that's small with very little effects and the licensee can get people to agree that some steps aren't needed, then we are very happy to waive parts of these regulations.

MS. MOLLOY: One reason we did not make a specific exemption for small projects is because what Ann said there that's key is a small project that has little effect. You can have a small project that does have an effect, and that's where it gets, you know, a little bit tricky. You can't just say that "any project under this size, you know, has no effect". It depends where it's located, what happens to be there. And so you just have to be careful that you recognize that it's not just size determinant, and that's why we did not just carve it out

with an exact definition of something.

MR. LAYMAN: Steve Layman, GeoSyntec. What period on the flowchart constitutes NEPA scoping for the purpose of identifying significant issues?

MS. MILES: It begins in box 4, that's where we're holding the scoping meetings, and then it's a bit iterative with another meeting, box 9, with the study plan meeting. It's not officially called the scoping meeting but probably serves that purpose a bit.

MR. JOBSIS: This is Gerrit Jobsis again. I've got another question. Well one thing, one of the questions you-all have asked is -- of us is one of the questions I have, but, which is, you know, there's these three processes and which criteria are going to be developed to allow an applicant not to use the Integrated Process but to instead use either the Alternative or the Traditional. So that's an important thing, and I guess you're asking us for input on that.

But kind of following up on that, I guess our interest is actually that any criteria established, make sure that it is in the best public interest to have the ILP not be followed -- the Integrated Process not be followed; and especially when it comes to the Traditional Process, there needs to be very clear criteria, and one of the reasons is -- my question actually is: why in the

Traditional Process has it been revised where there's not an additional information request opportunity anymore when that is the process that at least, as I envision, it would have the least amount of public consultation requirement but again does not envision having an additional information request opportunity that may be more needed in that process than others?

MS. MILES: Are you talking about after the application is filed?

MR. JOBSIS: Right.

MS. MILES: Yeah. Well our thinking is that we moved into the Traditional by adding the two things that we added which were public participation from the beginning and requirement to use the study dispute resolution that the studies would be done prefiling in the Traditional also. Those seem to be the two things that were causing that not to happen in the Traditional and it's why we made those two changes. Given that, then there isn't -- we didn't think there needed to be a formal request for additional studies after the application was filed any longer.

MR. JOBSIS: And I'm sorry, I haven't digested all of this --

MS. MILES: All I can tell you is the thinking behind these things. You may completely disagree with

them, but that was the thinking.

MR. JOBSIS: But in the other two processes, the Alternative and the Integrated, is there such an opportunity still to do -- or there would not be?

MS. MILES: No, they are the same. The concern is that if you put a specific step in the process where you allow additional study requests late in the game, people are going to hold off -- I mean, we've seen it happen -- and not get it out on the table early. So the whole point of this is that everybody gets their requests on the table early. The one thing -- the thing that's causing it go to 47 months after the application is filed is that you end up doing 2 years of studies.

Now given that, there may be projects where you can't get all the information you need during the prefiling process. There could be instances where, you know, you've had a very anomalous year as far as water goes or a study that you did really brought up something that you had no idea was going to happen. So we know there may be times where you need to do something after the application is filed. And let me just explain to you the way this is envisioned in here if you didn't pick it up. I'm going to use the flowchart.

There are comments -- after the first season of studies and after the second season of studies, there is a

report that will come out from the applicant about the studies, a study meeting, and the opportunity for requests for study modifications. And in the rule it gives some -- a list of reasons why it may be appropriate to need further study, like you don't have a good water year or the study raised something that you couldn't foresee. Then the applicant would put together the draft application, that's box 16(b). And then there's opportunity for comment on that draft application, and that's the last formal request for additional information. And again, it's got a fairly high hurdle; it can't come in with something new that could have been asked two years, three years previously. It would only be as a result of that criteria that's in there that it would be considered an appropriate study request at this point.

What the expectation is then that the licensee will take that request and say "okay, yeah, we agree we need to keep doing that" and they then when they file their final application would say "we think this study is needed, this is the schedule upon which we're going to go ahead and do it"; or they may say "no way, we just don't think it's necessary, and these are the reasons why we don't think it's necessary". Then that would come to the commission in the license application and the commission staff would make a decision -- that's what's in box

19(b) -- on whether we think we need that study or not in order to make our decision.

MS. JANOPAUL: Ann, I just want to clarify, are you talking about a change to the Traditional Licensing Process where after the application is filed or --

MS. MILES: No, this is the ILP.

MS. JANOPAUL: We're just talking about the ILP. We're not talking about --

MS. MILES: No.

MS. JANOPAUL: So the change in the Traditional you would insert the opportunity for study dispute prior to the application being filed, that you're not doing away with the opportunity after the application has been filed for additional study request or additional information request? I just want to clarify.

MS. MILES: Well let me actually look it up what we need to find in here. I'm not sure where it is. Maybe someone else does. There is language in the Traditional regulations right now that says "in our tendering notice" -- which is the notice that says the application has been filed -- "we request -- we ask anyone if they've got additional study requests". I believe we have taken that out of this; we no longer will solicit additional study requests in the tendering notice.

MS. JANOPAUL: I will say then this is why this

is another issue for resource agencies because -- I'll tie this back to Mr. Layman's question before. He asked when does NEPA start in the proposed ILP. If you'll look at Section 5.5 we have a Commission Notice -- this is like box 3 -- well it's the top of page D-58, Roman numeral (iii) "assignment of a project number and commencement of a proceeding". You actually have NEPA, you have commission involvement in the ILP, you have the director of the energy projects involved, staff involved making a decision, and a NEPA document to rely on; and there is an opportunity for informal dispute resolution for nonmandatory federal agencies or qualifying -- this is all -- and they can rely on the NEPA document and the scoping.

I think this becomes a problem with the Traditional Licensing Process because you don't have the commencement of a proceeding, you don't have the scoping, you don't have the NEPA document to rely on; and in the Traditional Licensing Process you're just going through that standard three-stage consultation. And how you can plug in this dispute resolution process which is hopefully a never-never thing for the ILP -- I really should say that up-front, we expect this to be not used or rarely used because we're hopeful that things will be worked out in those scoping meetings together with the commission and

the licensee and the other parties; we are hoping this is not to be used often.

But the idea that in a Traditional Licensing Process where you don't have that up-front NEPA, you don't have that up-front commission staff involvement, to suddenly say let's have a dispute resolution and to lose that opportunity after the application is filed for additional study requests I think -- not only for mandatory agencies but for other stakeholders, that's an issue. I will tell you the resource agencies are pretty concerned about that change.

MS. MOLLOY: On page D-24, on D-24 --

MS. MILES: D-24?

MS. MOLLOY: Right, it does talk about the three-stage consultation in the Traditional Process and here it does state -- it talks about the three stages and it talks about disputes being referred to the director, but it basically says at -- I have to go back through here and find a site -- Section B -- it's on D-24, it's (v), if you go down, it says (v), it has a bunch of numbers ahead of it on another page, that "if a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies the commission will not entertain the dispute following the filing of an

application".

It doesn't say there won't be; it says it has to be raised before, and if it hasn't been resolved the commission would look at it. It's basically trying not to have it wait, that if there's an issue that it be raised early on so there can be an attempt to resolve it. So it does try to alter it some but it doesn't eliminate the entire --

MR. McKITRICK: Are there any other questions dealing specifically with Ann's presentation? If there aren't, what I'd suggest is maybe -- Gerrit, if you know specifically where that language is, if maybe we can spend a little bit of time during the break just to sort this out for ourselves.

MS. MILES: I actually just found it, it's on D-17, and if you look down to (5) -- no, that's not it. Sorry. I'll find it.

MR. McKITRICK: We'll look for it. Are there any other questions dealing with clarification of the slides that were presented? If not, I'd like to take a 15-minute break. I would suggest, obviously use it as a break, but I would encourage you -- we are getting into the crux of this, identification of your concerns. We listed a few of ours. If they are the same, that's great. If there's something different, please think about those

and we'll record those and prioritize them after we get back from the break so that we can have a good discussion later on today.

A couple things that I should have mentioned before we got started is that within this book, obviously Ann pointed out the flowchart; hopefully all of you find the slides that we were using towards the front of this. There is the NOPR as well as a redline/strikeout of proposed text on C-101, Appendix B. This was a list of some of the questions -- Mona, is that -- these were some of the issues that we had identified just to help you refer back to those. Certainly we're interested in hearing from you. So take that time, get your thoughts together, and let's meet back at about -- it's almost 10:30, so a quarter 'til 11 and see if we can identify the issues that we're going to be talking about the rest of the day. Thank you.

(Recess taken.)

MR. McKITRICK: Okay. We are coming to your part of the meeting. We are looking forward to this. I think before we get started there was a couple people that came in a little late, so it may be -- just introduce yourself and who you're with.

MS. TAYLOR: I can speak loud.

MR. McKITRICK: We got a court reporter, and it

helps.

MS. TAYLOR: I'm Vicki Taylor, Catawba-Wateree Relicensing Coalition.

MS. LARSON: Julia Larson, Duke Energy, regulatory specialist.

MR. McKITRICK: Was there anyone else that came in after the introductions? Okay.

What we have planned is Liz Molloy over here is going to help us with regarding your comments, the concerns that you may have, putting them down and we'll make this list, prioritize this so that we know what we'll be discussing. Depending upon how long this takes, we may get started or we may just break for lunch. I'd like to again just kind of reiterate that this is being recorded. If you'd raise your hand, we'll get you a microphone; again, if you would say your name and who you're with clearly so that it could be recorded the identity as opposed to "bloop, bloop", that would be good, and then we'll see what everybody has to say.

Issues again that people might like to raise and then hopefully discuss. And this would include issues obviously of Ann or Mona or Liz, if any of us have issues we can certainly put those in there. We're missing Patti.

MS. CASON: I guess an issue would be the dispute resolution process. My understanding is there's

no appeals process for the licensee itself to appeal FERC's decision on the study plan, and so I guess that would be my issue. My understanding is you're providing an opportunity for the applicant to provide information to the panel for consideration --

MR. McKITRICK: That's right.

MS. CASON: -- and once the panel makes its decision, the licensee has no appeals opportunity.

MR. McKITRICK: We'll have a chance to talk about that. Anything else?

MS. MILES: Should we be more detailed on what's up there? It seemed to be a pretty specific question.

MR. McKITRICK: As far as no appeal process in the existing reg.

MR. LAYMAN: Steve Layman, GeoSyntec Consultants. I guess as a general issue, separating the identification of significant issues from study requests. They seem to be so intertwined early on, how best to separate the identification of significant issues for NEPA analysis from the study requests and disputes that might surround those.

MR. McKITRICK: Anything else as you went through the NOPR that gave you heartburn that you would like to have an opportunity to discuss? Jody?

MS. CASON: We were talking with Ann during the break. There's just some confusion I guess -- I don't know if this is an issue to discuss this afternoon -- but there's some confusion, there's several licensees here that already have initiated a Traditional Licensing Process whether it be communications or not. There's just a lot of confusion about what parts of the proposed rulemaking will impact them. Specifically we had a question earlier about the content of the license application and I think we got clarification there. Then there was a discussion about no more additional information request in the Traditional Licensing Process. How does that affect these folks that are already in that process? So we just need to have a better understanding of what those things are and who they're going to impact and when.

MR. McKITRICK: So the ongoing, the transition phase, and how that --

MS. CASON: Right. It seems from our discussions with Ann some of the things such as the changes to the content of the license application will impact these folks that will be filing their license applications after October this year. But other things, such as the changes that no additional information requests, might not because of the process issue and the

process is already underway. So it's very unclear to us what's going to apply to us and what's not.

MR. McKITRICK: So you'd like some clarification on that and maybe you might have some ideas that would help us --

MR. JOBSIS: We might.

MR. McKITRICK: Okay. Good. Gerrit?

MR. JOBSIS: I'd like --

MR. McKITRICK: Again, just names.

SPEAKER: Right, Gerrit Jobsis. I'd like to discuss the timing of the 401 certification especially in the ILP and ALP processes.

MR. McKITRICK: As far as when it's --

MR. JOBSIS: As far as when it occurs and why it occurs prior to NEPA taking place or a final NEPA decision.

MR. HANCOCK: Jim Hancock. Going back to the dispute resolution process, we kind of narrowed that to the appeal of that. I'd kind of like to hear a little discussion about the process itself, getting into how you-all envision that happening and who's going to be invited to participate, how does that participation go, will we have an opportunity to cross-examine somebody else's presentation, that type of thing. So just generally how that will proceed.

MR. McKITRICK: Particularly as it might be related to licensee but certainly public or other state --

MR. HANCOCK: Right, if a member of the public stakeholder is allowed to participate in what form they obviously have under this proposal can initiate it, but what role can they serve, can they come in and cross-examine the licensee, experts, ask questions?

MR. McKITRICK: We'll certainly be glad to give you our thinking on it, we're particularly interested in anything that you may have that would help, after any further clarification. I think you've done that several times through here.

MR. MOORE: I'd like to put on the agenda for discussion -- David Moore. The scope of the PAD document and information criteria.

MR. McKITRICK: So fully go into that in more detail and you might want to add things or talk about it, are some of these things really necessary as far as the criteria is concerned.

MR. HANCOCK: I do have some questions about how it might apply.

MR. McKITRICK: Good. Okay.

MR. JOBSIS: Gerrit. I've got another question, I guess it's related to the 401 timing but also the agency terms and conditions required, the REA, some

discussion on that, final terms and conditions being required at the REA rather than --

MR. McKITRICK: For the Traditional Process?

MR. JOBSIS: -- for the Traditional Process rather than during NEPA --

MR. McKITRICK: Well.

MR. JOBSIS: -- or after NEPA. Thank you.

MR. McKITRICK: Ann? Mona?

MR. MARTIN: George Martin. Ron, I just would like to have some in-depth discussion about the cooperating agency and the policy.

MR. McKITRICK: Related to the ex parte rule?

MR. MARTIN: Yeah. Yeah.

MR. McKITRICK: Vicki.

MS. TAYLOR: Vicki Taylor. I would like to hear some discussion and perhaps examples, maybe hypotheticals, regarding the nexus definition issue for the study requests.

MR. McKITRICK: For the study, between the studies and the criteria?

MS. TAYLOR: Yeah.

MR. McKITRICK: Yeah.

MR. MARTIN: George Martin. Also I would like to have some discussion about the time line, the deadlines for the various activities in regard to the licensee, the

resource agency and the public and the nongovernmental organizations, how we assure that everybody meets the deadlines and the consequences surrounding not meeting the deadlines.

MR. McKITRICK: So not so much the length of time but making sure that people -- how do we ensure that people meet these deadlines and what happens if they don't?

MR. MARTIN: And I hate to say enforcement, but.

MR. McKITRICK: Yeah. So further clarification of some of the discussion this morning we had with that. It would certainly -- some of these things again we will be glad to give you our thinking on this, but again we are certainly looking for some ideas associated with that after we give you any kind of clarification; if you think that there's something that you could help us with in this, that's what we need and any back and forth discussion is appreciated. Jim?

MR. PHILLIPS: Yes, Jim Phillips. My perception -- again I'm on a steep learning curve here -- but once the clock starts on a relicensing process, if conditions in the geographic area change what accomodation, if any, is there for either a time-out or a shift in timing of the whole evaluation? Or how is change

accommodated once the clock is running?

MR. McKITRICK: I'm sorry, Jim, change in the geographic area?

MR. PHILLIPS: Yes, if you've got events occurring downstream from a project, what accomodation will there be, if any, for reflecting those?

MR. McKITRICK: So from the standpoint of if events change in the area that may relate to studies that were originally done, that somehow this change may affect --

MR. PHILLIPS: Correct.

MR. McKITRICK: -- that project? Okay. And again -- okay. Good.

MR. JOBSIS: This may be terribly specific, but I don't know if it's in the whole scheme of things, I'd just like a comment or two on it.

MR. McKITRICK: I think certainly Ann kind of alluded to some of the things -- even as studies come out if things change how that might be accommodated, but it may be something that we need to have a little more discussion and see if it's a common sense thing or something we need to put into a rule.

MR. JOBSIS: Gerrit. I guess probably the third time here, clarification of the timing issue, I guess also looking at that we need to address the Coastal

Zone Management Act and that process too. And then another thing, which I --

MR. McKITRICK: You want the CZMA and 401 discussion together or --

MR. JOBSIS: Essentially it's the same, 401/CZMA, yeah, it makes sense to talk about it all at once. And I also brought up earlier this morning about what criteria would be used to allow an applicant not to use the Integrated Process. You know, when would they be allowed to use the Alternative or use the Traditional and how do we develop those criteria?

MR. McKITRICK: So more discussion with the criteria particularly for the Traditional but maybe revisiting the ALP as well?

MR. JOBSIS: Right.

MR. McKITRICK: Okay. Any --

MS. MILES: I'd like to add one. Ann Miles. Whether there should be any study dispute resolution process in the ALP. That's one of the questions we did ask.

MR. McKITRICK: Give you a moment to look on burning issues that you may have so that we can talk about those and hopefully understand each other's positions and maybe even seek solutions on some of these things. Okay. George.

MR. MARTIN: This may be in or implied in bullet number 3. I don't mean to get too very specific but --

MR. McKITRICK: No, I think specifics are good.

MR. MARTIN: If we can look at calendar year 2003/2004 and sort of anticipate the beginning of processes that may fall within this transitional period, just maybe do an example.

MR. McKITRICK: Things within the transitional period or things you would --

MR. MARTIN: Within the transitional period, if you had to select in the time frame, the July issuance --

MR. McKITRICK: To October or --

MR. MARTIN: Yeah, just if we could kind of do an example, a real-time sort of example, it would be helpful.

MR. McKITRICK: Okay. Vicki.

MS. TAYLOR: Vicki Taylor, also toward the bottom in the learning curve. I'd like to discuss some of the issues regarding -- I'm not sure if I recall seeing it in the Integrated Process, I'm somewhat familiar with the Traditional -- the treatment of local land views plans, comp plans, recreation and whatever local communities, whether they be counties, municipalities or even state plans, and the requirements that the commission has for

them to be filed and how they need to be treated in shoreline management plans and, as a subset of that, how exactly shoreline management plans are treated vis-a-vis projects operations.

MR. McKITRICK: Okay. I have a question. Was there any change in our regs dealing with the submittal of comprehensive plans or shoreline management plans?

MS. MILES: No.

MR. McKITRICK: So that will be -- we don't anticipate any change on how that's done. If we have time, that might be something that we can discuss there if there's time.

MS. MILES: Ron, there are -- in the Pre-Application Document there are some things in that probably worth talking about.

MR. McKITRICK: Good. So there is something within the PAD that talks about shoreline management plans as well as comprehensive plans.

MS. TAYLOR: Vicki. I think what arose for me was in how that would relate to this nexus question. In other words, is there sufficient nexus with some of that and project operations and effects, and I'm just not clear on how that is contemplated.

MR. McKITRICK: We'll certainly put that up there, maybe you can help us bring that discussion going.

MS. TAYLOR: Thanks.

MR. HANCOCK: I don't know if this is something for discussion or clarification, perhaps it's just a comment or observation I'd like to make, but there's several places in the proposed rulemaking where we talk about the goal of this proposed rulemaking is to be a more efficient and timely licensing process without sacrificing environmental protection; that appears several times in there.

And I guess my observation, perhaps this could go to some discussion, it seems to me we saw the slide earlier that Ann put up under the ALP and I think we're expecting under the ILP we're looking at maybe 17 months, right now the Traditional has 47 months. To me the timing, 17 months is not necessarily better than 47 months if at the end of the day we don't have a better licensing document, a product that we all have to live with for 30 to 40 to 50 years; if it's not any better, just because we squeezed down 20 months, it seems to me that adding a -- or allowing for a little bit more time in the process to get a better document is not altogether a bad thing.

So I guess my question/observation is: is this proposed rulemaking also intended to result in a better, more informed licensing decision and an ultimately a better license document itself or are we simply trying to

become more efficient, timely, squeeze that process back without sacrificing environmental protection, which I would also like to see without sacrificing, generally --

MR. McKITRICK: Is the implication in the discussion is that the Traditional Process is resulting in a better application than the ALP or --

MR. HANCOCK: No, that's not my implication. But again, it seems like we're trying to squeeze time out of the process because squeezing time seems to be the goal or that's the goal in and of itself. And if it took say 40 months to do an ILP even, if there's a better license document, better informed decision-making, again my goal is to have a better document not just a faster document.

MR. McKITRICK: And then the discussion on -- I understand the premise is that then: Do the proposed regulatory changes also result in a better document, and maybe the discussion is how can we ensure that?

MR. HANCOCK: Yeah, I think that's a fair way to say it. Again, just stating the goal up-front seems to be on a timing and efficiency issue not necessarily on the other end.

MS. MOLLOY: Does this capture the idea of the last one: explore if and how purpose of new process will be met?

MR. HANCOCK: Yeah, I think that --

MS. MILES: I actually would add outcomes, better outcomes, because that's what I heard you say. You're not sure you heard us saying that as a goal here and you'd like to talk about it.

MR. HANCOCK: That's right, if in fact that is one of your goals.

MS. MILES: And I can tell you it is.

MR. McKITRICK: I would hope so.

MR. MOORE: David Moore. We can probably put this next to the bullet titled criteria for TLP/ALP. I'd just like to add to the discussion the issue of whether the ILP is appropriate for a default process.

MR. McKITRICK: Good. Does this cover what we should be maybe talking about the rest of today, tonight? I think there's a very good list here. I don't want to cut it short, in thinking and reading back through this, either a regrouping or adding some specificity to what's already up there, to focus our discussion on it could be helpful. If not -- I think we'll prioritize these from the standpoint of just voting, and there's a number of them up there so that -- some people raised two or three questions. You can vote three times? Only once?

MS. MOLLOY: Unlimited voting. What the heck. Only one per question. You can't --

MR. McKITRICK: Yeah, don't raise two hands.

We'll count these. Okay. We'll let you vote as many times as you want but only once with one question. We'll keep track of this as we go through and relist this, and that will be our order of discussion.

So the first one we have up here is: Dispute resolution process, further discussion about the no appeal process and who's involved and how the process will work. Okay. We're looking for hands, if this is an issue that you want to discuss.

MS. JANOPAUL: Now all hands are up, no late hands anyone.

MR. McKITRICK: I got 15 hands.

The second one is: How best to separate significant issues from study requests --

MS. JANOPAUL: How best to separate significant issues from study requests.

MR. McKITRICK: This is an issue for 5.

Clarification of provisions that apply to existing license process; transition issues; create a discussion on real-time model dealing with the transition rules that we have. Okay. 15. A tie.

Timing of the 401/CZMA; terms and conditions associated with those two as an issue. 2.

Okay. The PAD document, the contents and the applicability of the contents of that. 7.

The cooperating agency and intervenor policy that was within the ILP. 6.

The next is criteria for study requests. 9.

Time line that has been outlined in the ILP and any enforcement that may be associated with that time line. 2.

Flexibility and accomodation of the schedule --

MS. MOLLOY: -- time-out or any other method.

MR. JOBSIS: Gerrit. It was changing --

MR. McKITRICK: Oh, changing circumstance and those kinds of things. Thank you. Got 3.

Criteria for TLP/ALP, is ILP appropriate for default. 8.

Study dispute resolution process for ALP. I guess general clarification as well as -- no, it's: should there be a dispute resolution process with the ALP. Got 4.

Local plans and requirements including shoreline management plans, talking specifically how they're related to the PAD document.

MR. JOBSIS: Gerrit. And to the comprehensive plan, isn't it?

MR. McKITRICK: I'm sorry, the comprehensive plans should be included in that. We got 5.

Does this go on for another page or is this the

last one?

MS. MOLLOY: The last one.

MR. McKITRICK: Okay. The last one. Explore if and how the purpose of the new process will be met, outcomes, talking in the context of: is this going to achieve better outcomes just because of the timeliness and more efficient. 8.

MS. MOLLOY: That's the last one.

MR. McKITRICK: Okay. Good. We've got --

MS. MOLLOY: We got two 15s.

MR. McKITRICK: Two 15s, so we'll just take the top one and start off, and then -- these haven't really been reordered. No. Then drop down, the next is criteria for studies, we have two 8s --

MS. MOLLOY: Nexus is 9.

MR. McKITRICK: Sorry. Nexus is 9.

MS. MOLLOY: We'll start with 15 and I'll work on moving these.

MR. McKITRICK: That's fine. We got 11:30 right now. Would you like to take some extra time for lunch rather than -- I'm not sure if we got a half hour discussion on one of these topics and knock one of them off before lunch or would you just rather break, come back and have a full afternoon of discussion. Is there a preference? To break would be my preference rather than

to get started and get so involved in this and talk about one thing until 3:00 and miss lunch. Let's take a break, take lunch. I got 11:30. Do you still want to take an hour or -- an hour. So let's get back at 12:30. Thanks.

I really appreciate the list we developed, got a real good chance for a discussion this afternoon, realizing that obviously the person that brought this up may lead the conversation, but if there's other people that have similar or dissimilar opinions of the same question we're certainly interested in that, and then certainly following through to see if we can resolve those and find a solution. We may not be able to do that, but that certainly is something that may help you focus any kind of written comments that you would have that you would be giving us here in just a few weeks. Let's break for lunch.

(Lunch recess taken.)

MR. McKITRICK: Let's go ahead and get started. I made some copies of the issues we identified. I tried to pass those out, but I could have missed somebody. Anyone else need copies so you can read along? I'd like to start this afternoon -- again, I appreciate this morning helping us to identify your concerns. Now I think it's extremely important that you help us again kind of flesh out these concerns, what you would like to see, any

kind of changes, either the issue or any kind of changes in the existing regulation. I'd encourage cross-discussion. We need to maintain the rigor of getting the microphone to you, but that usually works out okay.

I would encourage then as we can -- as you think about these things if we do have disagreements in some issue if there's somebody that can help pull that together to a solution, that would be great. If we can't do that, we're not going to stop this, we're going to just move forward. I think what we'd like to do is as we go through these issues those folks that brought up specific parts of these starting with dispute resolution process, no appeal process, maybe start that discussion with what they meant, how they wanted to identify any kind of changes that they'd like to see, anyone else that wants to be involved or has added parts to that to do that; and then if there's questions dealing with the FERC resource agency thought process of why they put together this, hopefully I think we'll be able to address those issues also.

So with that, the first one that came up that we had a number of people wanting to talk about was the dispute resolution process, one of the specific things was that there's no appeal process, then who's involved and

how would the process work as a more general thing. So we'll start with Jody.

MS. CASON: Jody Cason, Long View Associates. Yeah, I'd just like to ask you generally to discuss or summarize the whole dispute resolution process again for us. Then I guess my concern or my issue was the absence of an appeal process for the applicant. We had discussed that they were going to be provided an opportunity to provide information to the panel, but once the panel makes its decision there's no recourse. I guess in the absence of that, I don't have any solution other than request that there be an appeals process. And a secondary question, how the decision of the panel could be binding to those agencies with mandatory conditioning authority, how is that going to work out?

MR. McKITRICK: Okay. Good. Ann, do you want to --

MS. MILES: Yeah. You'd like me to go through the process again, study dispute resolution process? Starting from the point in box 11, the flowchart -- if you need me to go back before that, let me know, but otherwise I'll start with the formal dispute resolution process. In box 11 that's the commission's decision on the study plan. So within 20 days a mandatory conditioning agency -- and that would be -- could include the state 401s, any of the

federal agency with Section 18 or 4E authorities, they'd file a notice of study dispute resolution, study dispute, and then -- it's not on the flowchart, but I'll tell you exactly how it works -- the applicant has 25 days to file information with the panel and at that same time FERC has 20 days to convene the panel. The panel has 30 days to meet and come up with a recommendation, and again that's based on whether the study meets the study criteria. And then the panel makes its recommendation to the Office of Energy Projects director and he makes the decision within 20 days. And you're right, there isn't an appeal process formally built in.

MR. McKITRICK: Ann, to ask a question, box 11, when the commission issues their decision, is that going to be in the form of an -- I mean a commission order?

MS. MILES: Yes.

MR. McKITRICK: And what we're saying is that that's not appealable?

MS. MILES: Yes, it's interlocutory.

MR. McKITRICK: Okay.

MS. JANOPAUL: I guess I'd like to take a moment to chime in. Mona Janopaul, Forest Service. This comes after the plan where the director has made a decision supporting the applicant's position. Do you understand that, that you've already essentially convinced

the director that you're right because they've issued -- I mean, "you" meaning the licensee -- because they've issued a study plan without the study requested by the agency, and this is essentially an appeals process for us, the study dispute resolution? Do you understand that?

MS. CASON: I'm a little confused about your point.

MS. JANOPAUL: Well --

MS. CASON: We submit a study plan to FERC --

MS. JANOPAUL: Yes.

MS. CASON: -- and they approve it or have it changed?

MS. JANOPAUL: Right.

MS. CASON: Do they just take our study plan as is and that's what they're issuing as their order? And you're saying it's your opportunity for the dispute resolution to appeal then? So you're saying when FERC issues its order we should be pretty much satisfied?

MS. JANOPAUL: I'm saying, you know, if we go -- and again, I want to quote this morning saying I hope and it's foreseen we'll never get there, because now we've got this scoping process, scoping down the issues, really with this -- with the PAD document a much better look at existing information and a much better way of -- you know, consultation is still not exactly defined in the

FERC regs, but I think this is much better; it helps both the agencies and the other parties understand what's expected of them. You know, the Forest Service does something called an existing information analysis on its own when it goes through the licensing. I just foresee this is going to be the rare circumstance.

But if you'll go back to box 11, it essentially says at that point the commission has adopted or taken the study plan and made it its own that is in issuing the study plan; and so if it doesn't -- if that study plan that the commission issues doesn't include a study that say Fish and Wildlife has requested, that means it's already agreed with the licensee.

MS. CASON: Right.

MS. JANOPAUL: And the study dispute is essentially an appeal by the resource agency of that decision.

MS. CASON: And then they would take your appeal into consideration of the issue of final order. Then what if the licensee has objections to that? There's no further appeal? They just --

MS. JANOPAUL: I think until the license comes out, yeah.

MS. MILES: There's nothing built into the regulation there. And if you feel like there needs to be,

then that's a comment that you need to make.

MS. CASON: Okay. Thanks.

MS. JANOPAUL: The second part of your question was about the nature of how this can be binding on mandatory agency. I think -- there was a really good discussion of this in the Sacramento meeting, particularly the person from [inaudible] OGC I thought gave a real good rendition of it. So I will make an attempt here, but I encourage you to take a look at that part of the transcript from Sacramento when it comes up on the web site. I believe he said that binding may be a bit of a misnomer. What it does mean is that the commission has decided -- and it is the decider of how to interpret the Federal Power Act -- that there is sufficient evidence in the record to support our decision on our mandatory conditions. And I'll refer you back to paragraph 86 in the preamble.

But that's the decision that the director is making is they agree with the study plan and the existing information that there is sufficient evidence to support it. Now, you know, so when we go in and ask for dispute resolution, not only are we saying we had met that study criteria, but also from our agency's point of view we wondered do we really have sufficient evidence in the record to support that decision and make it. So for --

not for purposes of appealing later after the license is issued, after the commission's made its decision, we would still have that opportunity to file for rehearing, go to court; but for the purposes of the licensing process, we're going to say that's it.

And the benefit is certainty to all of us, certainty that we're not going to come back and ask for any more studies; or if we really feel them necessary, agency always has the option of conducting it itself. But if we understand from FERC that its their position that we have substantial evidence in the record, their interpretation of the Federal Power Act, then, okay, we'll go along with that and say "all right, based upon whatever the record is we're going to go ahead and issue our mandatory conditions".

So binding is a bit of a misnomer from the point of view that we can't later seek rehearing or petition for review, but it does mean for the rest of the licensing process that we all will have certainty from that point forward, that we're not going to keep coming back again and again on this issue. Is that --

MS. CASON: Yeah.

MS. JANOPAUL: Great.

MS. MOLLOY: Now there is one clarification. For some agencies they have authority outside of the

Federal Power Act, they could require additional information under that authority, but it won't be through FERC that they will be getting it. So that's a little different, that might be for Water Quality Certification.

MS. CASON: I understand.

MR. McKITRICK: You understand our position is that if there's additional things associated with the appeal process how would that -- if you think it's needed how it would have to be inserted into the reg and when and how would be helpful, specifics, as opposed to "there should be an appeals process".

MS. JANOPAUL: I'd like to point out there was a little discussion of your first point about recourse by the licensee after the director's final decision in the Sacramento meeting, it was mostly to the issue of where there had been a factual error; and I think we pointed out you can always file something, they can always issue an errata order, something to that effect.

MS. CASON: Okay.

MS. JANOPAUL: But, you know, we're hoping that what's been presented here is going to satisfy the licensee's needs.

MR. McKITRICK: Mark?

MR. OAKLEY: This is Mark Oakley with Duke Power. Part of the discussion I just heard seems to be

bounded on the premise that after step 11 licensees should be satisfied and it's the agency, the mandatory conditioning agency, that should have the opportunity to initiate a dispute resolution. And I submit that's not likely to be the case and I want to clarify the applicant's latitude to initiate the dispute resolution.

MR. McKITRICK: You're saying that with the commission order you think it's unlikely -- unlikely that you would be in agreement with the study that we are approving? It's unlikely that you would be in agreement?

MR. OAKLEY: I think that it's -- I don't think that it's necessarily a product that's going to be a given that the applicant is in 100 percent agreement. I think coming out of step 11 there's still an excellent chance that the licensee is not completely comfortable with the study plan that the study requests that are out there. The discussion I've heard sounds as though the licensee does not have the opportunity to initiate a study dispute resolution but that it only resides with the mandatory conditioning agency, and I don't think that's going to cover all the different outcomes of step 11.

MR. McKITRICK: I think that's exactly what it says is that the dispute resolution process is for mandatory conditioning agencies. Is your proposal that it be expanded for licensees or is there some -- am I missing

a point?

MR. LINEBERGER: Jeff Lineberger with Duke Power. To help clarify a little bit, go back to step 10. Step 10 says "applicant files revised study plan commission approval". Obviously what the applicant filed the applicant was in agreement with. What's missing out of there is -- I believe it's in the details of the NOPR -- that FERC absolutely has the authority to approve with modifications the study plan that the licensee filed. The heart of Mark's question is: what if the license applicant does not agree with the modifications? And then you move on from there, and if we don't have the ability to initiate a dispute resolution there's nothing we can do about it.

MR. McKITRICK: I understand. Was there any thought that went into that or is it --

MS. MILES: I think you've captured it correctly that there could be the potential that there is some difference between what the applicant filed in box 10 and what was issued in box 11. I think that's something that needs to be fleshed out more in here and your comments will help, or we can talk about it more what you'd like to see.

MS. JANOPAUL: Are you proposing more of the appeal that was discussed earlier or are you proposing

also access to this kind of dispute resolution?

MR. OAKLEY: Yes and yes.

MR. LINEBERGER: Equal access is what we're proposing.

MR. McKITRICK: With dispute resolution this is our chance -- we don't have to stick with just the specifics --

MS. MILES: Maybe this takes us back to a lot of these studies are based on the study criteria. That's really fundamental in here and -- so maybe a bit of a discussion about the study criteria and whether they satisfy the needs. Because assuming they satisfy everyone's needs and what a licensee is proposing is also meeting those criteria then FERC wouldn't probably find any reason to change it. Because I think, you know, we've issued this thinking it's a pretty good set of parameters to guide study plans.

MR. McKITRICK: If we want to --

MS. MILES: Mark's got something.

MR. OAKLEY: Again, this is Mark with Duke Power. I agree with you, Ann, and I think that the study criteria are one of the breakthrough features of the NOPR. I think that's much needed; we're excited about that being an option out there. I would ask the commission to consider a couple of factors. One is I think that you

really create -- can you establish a lot more closure if the study criteria were to also mention that the studies -- the decisions on studies have to be consistent with commission policy and practice. And certainly the commission has done a lot of work in the past ironing out some very tough issues, has set a precedent out there, set up a standard on certain types of decisions that don't really need to be revisited. And rather than articulate those as extending the list of study criteria, I think it should be plain that the commission will still work in accordance with its established policy and procedures.

Another factor would be, for consideration, is to make it very clear if it's the commission's intent that this study criteria and dispute resolution based on the study criteria will be open to any array of disputants from state resource agencies or the public or anything else. I think it's just a valuable tool and I think that if we can get the criteria to everyone's agreement, making it broadly available in addition to mandatory condition study request serves an even broader benefit.

MS. MILES: May I say something on this? We've had these discussions, I wanted to tell you some of the concerns and maybe you could give us feedback on it or other thoughts about it. One of the concerns is that the formal aspect of the study dispute resolution with the

panel has the potential to be very time and resource intensive. And as Mona described, the mandatory conditioning agencies and how that was worked out for that; and I know in this instance, you know, the commissioners wanted some limiting of that. But how do you see it? Do you think it could be worked through the formal study dispute resolution if it was open to all participants in some reasonable time frame? Or suggestions for how it could be changed so it could be worked through fairly quickly.

MR. OAKLEY: I just think that having the criteria noted and available to the applicant and all the other stakeholders in the licensing process puts a consistent set of guidelines out there and that consistent set of criteria and consistent expectations is something that they should be able to take advantage of. I respect the commission's, you know, attention to the fact that it is -- it can be procedurally, you know, a large undertaking and there's certainly resource requirements and time requirements that go along with that; but I think that giving a similar -- if not quite as formal at least a similar evaluation against the criteria assessment to other stakeholder requests is going to be real valuable.

MS. JANOPAUL: Mark, I'm looking at I guess -- let's see, this is -- whatever box number it is, but it's

Section 5.10 on this book, pages D-60 to D-61, and it talks about the contents of study requests. And that does pretty much mirror the study criteria. And I don't have the PAD stuff memorized, but I believe also it was semi-translated into that as well for the initial sort of study proposals from the licensee. So just as we're talking about -- just like I like the study criteria, I love the PAD because it's just going to evolve; we aren't going to have different documents going back and forth to see how it's changing.

But the idea was to take that criteria and start it with the licensing and PAD and then indeed require all those asking for additional information or studies to have that criteria by -- in box 5, Section 5.6. But that doesn't take care of your concern?

MR. OAKLEY: Well there's probably a point of context, you know, behind my question that needs to be brought out. And I wasn't aware of that content in the NOPR, so I think that does go a long way toward making those criteria more broadly available. One of the things that could provide value is if applicants in other processes that have already begun under Traditional or Alternative could elect to use their method of dispute resolution if they so chose.

MS. JANOPAUL: So you would suggest that in

ongoing -- or that this criteria be applied, that all stakeholders and licensees start using this criteria for study requests?

MR. OAKLEY: In processes other than the ILP could it be made available as an option.

MR. McKITRICK: So instead of the dispute resolution process in the Traditional, use something like this as opposed to what's already in there or apply this to the ALP as well?

MR. OAKLEY: If the disputing party asks --

MR. McKITRICK: For all --

MR. OAKLEY: -- to do it by this criteria and by this method.

MS. JANOPAUL: I see your point. Again just as I mentioned earlier, I'm just having some concerns about slipping this into the TLP process where you don't have NEPA and scoping going on. I think a lot of things have been supported. That doesn't mean it's not a great idea and something to talk about; it's just if you have some ideas about that that would really be welcome.

MR. McKITRICK: For those that came in a little late, we started off with a dispute resolution process, have answered some of those questions, and as I understand it we've just kind of skipped over the second bullet, kind of pulled in the third. The next one, criteria for study

requests. Or was that a separate issue?

MS. MILES: That might be a little --

MR. McKITRICK: Okay, I just want to see if we killed two stones -- or one stone -- whatever it is, one bird with one stone, whatever we do -- or if that was a separate issue.

MR. HANCOCK: This is maybe not a separate issue, but before we leave that bullet up there I want to get to the part of how that process would work -- I am John Hancock, Mona Janopaul reminds me. I need help from time to time -- how the process would work. If you could just take a moment. But I don't know if this is a hearing type process, if there will be testimony given, if there will be opportunity for cross-examination, will the licensee have an opportunity to -- other than present I guess written -- you said within 25 days the written position of the applicant, but what role will the agency serve or play I guess at the hearing? Will there be a hearing?

Not to get into too much detail, but one of the concerns I have too, I haven't had a chance to have a side-bar yet with Mona and really hear her explanation as to why she doesn't think the dispute resolution will be used very frequently; and I'm encouraged to hear that, I'll say that. But my worst case scenario is we've got a

panel for fishery issues, one for water quality issues, one for recreational issues, we have all these; and just being a lawyer and thinking I'm going to be in Washington one week running from hearing room to hearing room, you know, "this is Tuesday, it must be fisheries day". If we can put that all into one panel where one panel has responsibility.

And I know the arguments for not doing that, we need the expertise, we need the agency participation, all that sort of thing. And we talked a bunch today that there may be some ways to do it. I know the NRC has a way to do that type of thing and we can certainly address that in our comments. But if you-all could just take a minute to talk about, I guess, the logistics of a hearing before this panel to the extent there is a hearing.

MR. McKITRICK: Does anybody -- did we anticipate a hearing kind of situation?

MS. JANOPAUL: Mona Janopaul, Forest Service. You know, I want to point out this is an incredibly short time period; and not only do we have to find agency staff and FERC staff who have sufficient technical knowledge outside of the process so they have no conflict of interest, but we also have to find a third party. They have to look at the record to date, so what all the other parties have said on this, plus what the director's order

was, and then whatever else the licensee files in support of their position. So it's a pretty short time frame.

We discussed a lot of things. We discussed site visits, we discussed local hearings, we discussed, oh, a number of scenarios, maybe not quite as much as you described but the idea that on a single project you could have a number of study disputes requiring a wildlife expert, a rec expert, a fish expert on different studies and what kind of a workload we were looking at. And again, I don't mean to be overly optimistic, but the idea was we'd have this scoping process and that when we could be so satisfied by FERC's involvement, everybody else's involvement, the PAD, the scoping process, a few rounds of study requests that most everything would be worked out by this time.

But that the potential for workload -- but back to your questions about hearings and site visits and all of these things, you know, given the short time frame and given the expense issues, we're leaving it up -- we are not foreclosing that, but we are leaving it up to the panel. So those are not foreclosed, but we did discuss all those things. Now hopefully -- and if you're looking at the criteria, you know, would those criteria really require a site visit? You know, how much research would they require of, you know, the literature in that

particular scientific group? I don't know. I don't know. And what if you couldn't find a third-party panel member available right then for that matter? You know, so these are all -- so we discussed all those, so we're leaving a lot of those things to the discretion of the panel. And I think there was some investigation as to the "who would pay" issues and I'm not sure the result, FERC staff was looking into that.

MS. MILES: I think the rule says FERC would pay not for the agencies but for the third-panel travel or something along those lines, but not the fee for participation. And there wasn't any discussion that a formal hearing was required in each one. I think the hope was actually that wouldn't be the case, that whatever the panel thought was needed, I would concur with what Mona said, would be the direction.

MR. HANCOCK: So the panel would get to kind of look at the issue and decide how best to resolve it whether it's a formal hearing or maybe just a meeting at which people can sit around a table?

MS. MILES: Or maybe just paper.

MR. LINEBERGER: Jeff Lineberger, Duke Power. To follow up on the panel composition a little bit and equal access statement I made a while ago, with no -- no ability right now to enter into dispute resolution

ourselves as the applicant, no appeals process for the resolution that comes out, we don't feel like there is equal access if the resource agency is part of that panel. It would seem more appropriate if you're interested in equal access for the resource agency not to be a part of that panel if the license applicant or anybody else that might have reasons to want to be in dispute resolution are there.

I know it would be very problematic and complicated to try to allow everybody that may have a concern with the disputed issue being a part of the panel or to be there to testify or whatever, I fully understand that and I understand the concerns about needing to do site visits; that's something you're just not -- I don't think you'll be able to build into it and have this thing move quickly. Have you thought about a dispute resolution panel where you have a FERC D.C. staffer and maybe this third party that's in there now and maybe your other person on it is the lead FERC person that's out involved in that particular process? They've been there from day one, they heard everything that's been said, they already know the project by that time, they know what the issues are, they could be your on-site expert essentially, and you-all could do that by conference call. You could have these other two folks that are in Washington regularly

meeting to deal with these dispute resolution issues and they just do a conference call with the FERC person that's centrally located with the relicensing process.

MS. JANOPAUL: Just for clarification. So you're proposing two FERC staff persons and a third party?

MR. LINEBERGER: That's correct, and the reason being is that the resource agency is a stakeholder in the relicensing process. FERC is supposed to be the judge. If you have the judge and one stakeholder making the recommendation, I don't believe that that -- in my opinion that's not equal access. And since there is no way for us to appeal or enter a dispute resolution ourselves, we're shut out of that.

MS. JANOPAUL: And I guess I would ask, would you still suggest that the resource agency be bound by the outcome of that panel?

MR. LINEBERGER: To the extent that the licensee is.

MR. McKITRICK: We'll see some comments to that effect, I anticipate.

MR. LINEBERGER: You may.

MS. JANOPAUL: Just in response to Jeff's earlier part, I again would refer you to some of the discussion in Sacramento yesterday where this was fully discussed. John Clements' response was that you have been

putting things on the record all the way along, the record is there for the panel to look at, and it should have been fully bedded through the scoping meetings and scoping documents. I don't purport to respond for FERC; I'm just suggesting, you know, in looking at what's going on in other regional meetings that might be helpful for you in forming your comments.

MS. MOLLOY: Just a quick note, it was the day before yesterday.

MS. JANOPAUL: Yes.

MS. MILES: One thing, I know that the Portland transcripts are on the web site; if you look at the rulemaking web site, they're there already, so I imagine by next week the San Francisco ones will be -- Sacramento, sorry.

MR. LINEBERGER: Jeff Lineberger again. We'll definitely look at those transcripts and see what else was said there. I am curious though, there are other licensees in the room, are any other licensees concerned about equal access for them in this -- the dispute resolution process itself or concerned about the resource agency being part of the panel?

MR. PHILLIPS: Jim Phillips. I guess my question for you is: is not the applicant considered a stakeholder, and therefore if an agency is not engaged you

have a stakeholder with FERC from the get-go? That's the question.

MR. McKITRICK: Just to restate that so we can get an answer, the question was just that: isn't the licensee considered a stakeholder? And then what was the other point with that?

MR. PHILLIPS: Well I thought your point was that you would have an unfair panel with an agency and FERC and the applicant. But is not the applicant also a stakeholder of equal weighting or certainly no less weighting than the agency?

MS. MILES: The applicant certainly is a stakeholder, one of the stakeholders. The idea here was for the mandatory conditioning to use that formal dispute resolution process for the mandatory conditioning agencies to sort of put an end to the need to continue to ask for studies, for a decision to be made that there was adequate -- that as a result of the studies that are in the study plan there will be adequate information for them to issue their mandatory conditions which we all know is required and has in some cases been the thing that's left at the end, a feeling that there's not adequate information for them to be able to move forward with their conditions.

So this process was worked out to achieve that.

Now obviously from the discussion here it brings a lot of heartburn to some people and what we want to do is to understand that. I think the thinking here in this was that there was lots of opportunity for everyone else's thoughts on the study plan to be on the record and to be taken into consideration in that box 11 where the commission makes a decision, preliminary decision; then because of this mandatory conditioning there would be this opportunity -- hopefully it wouldn't be used very often, as Mona was saying -- and then there would be the final decision. The hope is that at box 11 most of the studies would be agreed to and the applicants will start to do those studies. In the instance where we do have to go to this other dispute resolution process, we'd go to it. We did have a discussion whether the final order on the study plan in box 14 is interlocutory or not, and that may be where you want to focus some of your comments. I know that was something the commissioners did have some wrangling with.

MR. LUCAS: Phil Lucas. In response to Jeff's questions, a fellow licensee, I do share his concern as far as the resource agency staff being on the advisory panel. On the surface it doesn't appear to be a fair balance there. Without the details, to me if the applicant is presenting to the panel then it appears that

the resource agency should probably appear to apply their side of the -- their side of the story to the panel also. I share Jeff's concern.

MR. ELLIS: This is Gene Ellis with Alcoa Power Generating. Also responding to Jeff's concern, in our process we've already begun the three-stage process for the Yadkin project and we've already scoped out a dispute resolution process in what we're calling issue advisory groups. To the degree that the number would change what FERC does for those of us in this transition mode we would be concerned also. If it doesn't change what FERC does for those of us in the transition period then we would not share that concern. So our answer is a qualified yes, we are concerned, but it kind of brings up the second issue up there, what really happens for those of us in this transition? And then I can give you more detail about what our concerns are.

MR. McKITRICK: You're in the Traditional Process?

MR. ELLIS: That's right.

MR. MOORE: David Moore with Troutman Sanders. I would concur with Jeff's statement regarding the potential inequity in having the resource agency on that a dispute resolution panel which is essentially adjudicatory in nature, but I can't say it any better than he

previously has, so I won't.

I did want to see whether we were going to address the issue that I believe Mr. Hancock raised about the potential for multiple dispute resolution panels ongoing at the same time. It would seem to me as though oftentimes disputes and issues related to some of these various resource areas often interlap, overlap; and I don't know or don't see or understand the wisdom of having separate adjudicatory panels regarding those additional resource areas. Perhaps it's better to have one to address the study issues with respect to one proceeding, I wonder if the panel had a comment on that.

MR. McKITRICK: Again, before FERC responds, but did you have something in mind of how that could be done? I think Jim mentioned an NIC or something --

MR. MOORE: Yeah, there are several different options out there looking at other agencies. And not understanding the full reason why we have all these separate potential panels, also trying to strive for efficiency. You know, ultimately I'm a lawyer and if things do get messy enough a judge who typically doesn't have technical expertise in particular areas decides these issues, and I don't see the need for separate panels to address separate specific issues. I think if you have the right people making the decisions on the panel they should

be able to address several different study areas.

MS. MILES: Let me tell you what the thinking was. One of the criteria talks about seeing if the study methodology is consistent with generally accepted practice in the scientific community, and the sense was that that might require or probably would require someone who is an expert in that field of expertise. I think that we agree the more we can condense it, if there were a number of disputes in a particular project it would be nice if the person doing fish could do water or some of the other resource areas that are really close to theirs, or if the person perhaps doing rec might also be able to do if there was something on cultural life -- I don't know if there would be -- so that there is the fewest number possible. But the consensus was that it did require some technical expertise in the field in which the study dispute was being made.

MR. McKITRICK: People seem to like this, but, I mean, if that's an issue, would it be worthwhile to revisit the criteria? I mean, if being able to evaluate what's scientifically valid or not, if those folks don't believe that that is a good criteria -- I mean, that that would lead to multiple panels, is there some other way to reshape these criteria that would lead to a single panel?

MS. JANOPAUL: Mona Janopaul with Forest

Service. There's nothing here that precludes having a single panel address more than one disputed study request from an agency, so it's not a preclusion. But as to the issue of judges don't need to be experts, nonetheless they rely upon expert testimony. And these are not policy or, you know, anything that I would call -- these are very objective criteria. So I mean, taking off of what Ron said, if you want something else -- we tried to make these criteria as objective as possible. Also, they are aren't really -- they are making a finding that then the director may consider, but it is not a judgment or anything; they are in fact an expert panel advising the director. It is still the director's decision. So, I mean, that's not being taken away from FERC. So the idea of an adjudicatory panel, you would have to have very different criteria and FERC would be giving up some of its authority if you ended up going that direction. So, you know, I think you need to take another look at the criteria because they are pretty technical and specific and, you know, there is no reason that -- again, this is not something that's limited or spelled out in fact in either of Jim's or David's issues. Yes, there may be more than one panel, but there's no reason a panel couldn't cover other issues.

I do want to point out again this idea that

David brought up of overlapping or interrelated studies has come up at the Portland and Sacramento meetings, so you are not alone in your concerns.

MR. HANCOCK: I'll just respond to a couple things. I think Mona is right, there's nothing in here that precludes consolidating -- I'll say this one point -- if you have say a fishery study that's coming from NMFS and one coming from Fishing and Wildlife, you have two different agencies, so they both may want a seat at that table.

MS. MILES: The regs say they have to choose. There will only be one agency meet at the table, the way this is laid out there's only one.

MR. HANCOCK: The other one is, this is coming from my legal experience, if you have say on this three-person panel essentially from I guess my perspective, maybe other licensed applicant's perspective, an agency person on that panel, that agency person may be fair and independent but it's the perception that that's simply an advocate for the agency's position. I would think perhaps the agency would think that the FERC staffer may be a little bit biased towards the earlier decision of the commission with regard to that study request, so I can see that. So again, it comes down to almost that third person, the independent person, which is the swing vote.

It kind of begs the question: why do you need either the FERC person or the agency person? So you almost come down to just one person, saves time. I don't know if you want to recommend that.

MS. MILES: One thing I wanted to make sure you-all are aware of -- Mark you mentioned it earlier -- on page D-63 at the very bottom there, it's (k), it talks about what the director's decision, when the director makes the final decision, they take into account the recommendation from the panel and any applicable law or commission policies or practices. You had mentioned that.

MR. McKITRICK: Jeff, go ahead.

MR. LINEBERGER: Jeff Lineberger, Duke Power. I just wanted to clarify one thing. Before when I was talking about representation on this dispute resolution panel, I am not advocating that licensees be on that dispute resolution panel. Some question came up I think about that, I'm not advocating that. Speed I think is important at this stage of the game because keep in mind the licensee has got a big job in front of him to get all these technical studies done. If you don't get your studies done on time, as you-all well know, that can be the thing that prevents you from resolving issues before FERC ever sees the license application which I think is the goal we're all trying for.

I still feel, though, the way that it's set up with the resource agency being represented on that panel, as Jim says, it gives the impression or the perception that there is somebody there directly tied to advocating a stakeholder's particular position and I believe the process will be improved if you eliminated that perception by not having the resource agency as part of that panel.

MR. McKITRICK: I understand.

MR. BRYANT: Ron Bryant, Catawba Riverkeeper Foundation. Jeff and I know each other, so he'll not be surprised at what I'm going to say. The applicant in our view or experience seems to have essentially unlimited resources in bringing information to the table, and for the agency to be there to address or shall we say counteract huge amounts of information that tend to support the applicant's case, I think it's a fairness -- it's a balance to have the resource agency there.

MR. JOBSIS: I'd kind of like to reiterate what Ron said. My name is Gerrit Jobsis. What I mentioned before this morning is that I don't necessarily agree that only the resource agencies should be able to, you know, ask for this formal dispute resolution process. But given the way that FERC has laid this out in the NOPR it does make sense to have an agency representative on that panel because essentially it is now a -- the dispute that's

being resolved is between the agency and the commission. I mean, the way it's set up, you know, in this preliminary finding the FERC is not supporting the agency's recommendation that a certain study is needed and that's why the agency is elevating this to this higher level of resolution.

And in order to do that it makes sense to have a three panel -- to have someone from the commission, someone from the agency, and then the way you have it laid out here with a neutral party, an expert perhaps, in the area; that makes sense to me because it's really no longer between the applicant and the FERC, it's between the agency and the FERC.

MS. JANOPAUL: Mona Janopaul, Forest Service. I just want to point out there are certainly other opportunities for dispute resolution. You know, one was mentioned earlier, the Yadkin PD project. Is that correct? Yeah. And usually on the licensing there will be something formally worked out among the stakeholders for dispute resolution. FERC also has an office in dispute resolution and can help you on certain things. But I guess I will ask for clarification there. Is a dispute resolution process available now? I think it's under the Traditional where a party may write to the director of the Office of Energy Projects and ask for

essentially a nonbinding opinion.

MR. McKITRICK: Right.

MS. JANOPAUL: So I don't know if you're still going to make that available or not under all these processes. But there is still that opportunity. I will tell you -- and not for the record why, but I will tell you that the agencies do not use that process now but we are willing to use this process and be bound by it for the benefit of going forward.

MS. MILES: So I guess it's --

MS. JANOPAUL: So I guess it's a question to FERC. Are you still making that informal dispute resolution procession available where you can have a letter of opinion that's not binding either on the requester or the applicant?

MS. MILES: It's not specifically written into the ILP. That process is still available in the Traditional, but it is now required to be used by anyone where there is a dispute refiling. That's a change to the Traditional Process. It hasn't been formally written into the ILP. There is always the opportunity if during a prefiling period someone would want to take advantage of use of the dispute resolution service at FERC and come and have someone come and work with the group to see if they could iron something out. But there's nothing to prevent

that from happening in this ILP process especially during that informal period; if there was a need, to focus more on trying to really come to a group resolution of the studies. But what's written into the regs is something that we feel will move a definitive decision on studies to an end so that they can then -- so that the studies can be done and completed hopefully by the time the application is filed.

MR. McKITRICK: George.

MR. MARTIN: George Martin. The perception that the licensee could be excluded from this final dispute resolution process has been discussed since the first round of NOPR regional meetings and we expressed our concern at that point in time. In respect to Mona's observation, in my terms, this is a worst case scenario that we hope not to get into, if the stakeholders do draft studies that meet the content requirements and you have your round of draft study review and iterations, hopefully you won't get to this point. But if you do -- the perception remains that the licensee is out of the picture. And it could be that while the intent was there for the resource agency to participate in the early scoping and various iterations of that, they could still have a position that was different and remain all the way through the proceeding to dispute resolution and they are

the only stakeholder who have this remedy.

What I'm trying to say is they could have opposition through 4, 5, 6, 7, 8, 9, 10, 11, those boxes, and still take it to dispute resolution. So the perception that the licensee is out of it needs to be fixed. I like the worst case scenario and hopefully we won't get to the point where we need a multipanel, multidisciplinary expert and this all knowing third-party never has heard of the Federal Power Act person. Who is that person? He needs to get in the hydro industry. Just a few observations. The perception has been here since the first NOPR meetings and it's still there.

MR. JOBSIS: I'm Gerrit Jobsis. I guess kind of maybe going away from that subject a little bit, I was looking at this who was involved in the process and I heard Mona talk about the federal agencies are willing to enter this dispute resolution process, but what about the state agencies? They have their own -- are they expected to be bound by this decision? Wouldn't you have to enter into an agreement with each state that they are giving up making this dispute resolution process binding in South Carolina? Wouldn't the South Carolina Department of Health and Environmental Control have to sign off on this? If they say it's needed for their 401 certification, I don't understand how FERC can tell them "no, it's not".

MS. MOLLOY: I think we mentioned this before, the states, it's not binding on them for what requirements they might have for issuing their 401 or whatever. It does -- it does set what we would require, you know, for the studies to be done. They would have to proceed under their own statute and pursue that themselves.

MS. JANOPAUL: So that the option for the state is, you know, if the -- if the director found that there was sufficient evidence in the record for the purposes of the Federal Power Act to go forward that would be a final decision. If the state disagreed for purposes of its 401 under the Clean Water Act, separate authority, it would have to work directly with the licensee in dealing with the application of the 401 certifications. So the state would not be bound.

MR. JOBSIS: Right. So the binding part that you're talking about that the director would make is just -- would that be actually be binding to the federal agencies also but it would not be binding -- it is not binding to the state? Okay.

MS. MILES: Let me say one other thing about that, though. Many of the states -- dealing with the states and getting the 401, many of you may know that that is -- 401 Water Quality Certification is one of the things that's causing the longer time frames, that there are a

number of projects that are older where we are waiting for -- everything's done except the Water Quality Certification. And after the chairman held his meetings looking at what's delaying cases that are older than five years since the application was filed, one of the things we were asked to do was to go around the country and meet with the states and ask them, see if we can figure out things that could make a difference moving through that process more quickly and more efficiently.

And one of the things they all told us was that having them getting involved early and having FERC getting involved early and coming up with this process plan about how -- what they needed for their process and what FERC needed for its process could be integrated in the beginning. So even though this study dispute resolution may not be binding on them, the hope is that we won't have to worry about it at that point, that it will have been resolved earlier where we work together to see what they need to go through their process. Each state is different. Some need environmental documents, some don't; some have it at this point in the process and some have it over there. And sometimes I don't think we all know what the other has to do until way down the line. So the goal here is to get that on the table at the very beginning so that it's clear what everyone has to do and so we can

march through it together.

MR. McKITRICK: Just as a quick time check here, it's about 1:50, we got a break scheduled about 2:30. I feel like we're on schedule. Usually on these types of issues that there are a lot of people involved, a lot of hands came up, you spend more time; so I think this is fine, I don't want to cut off the discussion, but I think we've gone over a number of issues, the same thing a number of times. I guess I would encourage those that are -- that particularly think there may be a better way to slice this to look at what's been said, as George indicated, you've seen this a couple of times and there hasn't been substantive changes; so I think we need to look at -- take what's been done and look for ways to help us out on types of changes that would pick up on what you need.

But is there anything else -- I don't want to leave dispute resolution, it's a very important part of this regulation. If there's still things to be said, let's please do that.

MS. TAYLOR: Vicki Taylor. Just offer a thought. I think very much on the face of it Jeff's point is well made, that there seems to be some perception of inequity with regard to the dispute resolution, so I'm thinking more seriously about listening to Mona. I think

there's a couple of points to be made. One is certainly one would presume that the licensee has already made his best case. There's many, many opportunities here for them to have done that. And the commission has jurisdiction over the licensee, so it's appropriate that the panel -- sorry, that the licensee would fall under that, even if the commission adds modifications to its study plan. Whereas -- so it comes to the next question: are we protecting everyone's interests the way we ought to? In other words, are the licensee's interests here protected? And is there a different level of protection that the agencies should have?

So what I'm thinking is yes, because the agencies do not come under the jurisdiction of the commission; the agencies have their own interests to protect. Therefore they would necessarily require a process to appeal or it appears as an appeal to go with this, whereas the licensee would not necessarily have that because presumably they've been able to make their best case all along, what else would they add.

So what seems maybe reasonable to me is maybe upon issuance of the plan or with modifications that the licensee presumably doesn't like, rather than initiate a dispute resolution maybe the licensee should have a window of opportunity to clarify or amend its best case before

the recommendation goes to the director who makes the final binding decision. I don't know if that's a good idea or not, but I do now upon thinking see that there ought to be a difference of what remedies is available to the agencies versus what remedies are available to the licensee. But I don't think it seems completely fair that the licensee is being precluded from saying "hey, you didn't get it, let me make my case in a little better way before it comes to the final resolution". Is that reasonable? I'd be interested in hearing Jeff's response to that.

MR. LINEBERGER: Jeff Lineberger. To some extent Vicki's proposal would be beneficial to us because it's not really an appeal, which would be better, but it is the opportunity to have one more statement before the director makes the decision. I think the thing that's being missed, though, is these are mandatory conditioning agencies. Licensees don't have the authority over them nor does the FERC, and they can write what they want to into the new license; they already have that step up.

And I think the other thing that's being missed is, yes, the record is being created from the day the relicensing process starts all the way up to this point, I completely agree that that's the record that the FERC ought to make its decision based on. Everybody, all

stakeholders, have a role in creating that record. It's not the licensee's record, it's the license's record and it's being created from day one. The FERC needs to make their decision based on that. And while I would like to at least have the opportunity that Vicki has mentioned, I still don't believe that's really addressing the issue.

MR. McKITRICK: Anyone else? Great. I'll magic mark out the first one here. It's about five to 2. An equal number of people were concerned with clarification provisions that apply to existing license process, the transition issue that was alluded to, and I think we talked about maybe creating some sort of real-time model if there's time or interest to do that, that would be good. I think maybe Alcoa or Jody may have brought this up initially.

MS. CASON: Yeah, we were just asking for some clarification. I think we understand now that the proposed changes to the content on license application would apply to any applications filed three months after the final date. So we're clear on that.

One of the areas we remain unclear on, there was some discussion earlier about the elimination of the opportunity for additional information requests in the Traditional Licensing Process. And if that happens would that apply to traditional processes already under way? So

our overall concern is understanding the changes to the existing processes, in our case the Traditional process, in the transition period. It's difficult because some things seem like they apply, they will apply, and others don't. I guess the example would be the application contents would apply to us but the additional information requests would not.

So, you know, in the final rulemaking get some clarity maybe in all one place? I know throughout the rule there's "this will apply here", but maybe in one place where it says "these are the changes that are going to take effect and it'll apply here". Just more clarification. We are a pretty confused.

MR. McKITRICK: Understood. Have we gone through -- is there a clear explanation to what's in and out?

MS. MILES: Well each section has a transition provision at the end of it. What I'm hearing from you, Jody, is that doesn't get all instances where your project might fall in that transition, there are different aspects of those sections that you think might be reasonable to apply and might not and it's just not clear.

MS. CASON: Yeah, exactly.

MS. MILES: It would be probably best if you can give us as detailed an example when you file your

written comments so we can really understand how to make it better. The more detailed you can be in your comments the easier it's going to be for us to address the particular issue.

MS. MOLLOY: But having -- I don't know we can answer you right now, but what we will do is go back and review it closer to try to make sure that we've nailed that down, made it as clear. I mean, we'll look at it with an eye to that.

MS. CASON: Okay.

MS. MOLLOY: Because I think what we're just going to have to do is sit down and go through it and just make sure, you know -- we'll give it to untested FERC staff and see if they can figure out, you know --

MR. McKITRICK: Examples would be helpful. I mean, obviously everybody has something in their mind and it may not be what's in your mind. So as we test it, we still may miss points. So as people have concerns in that regard, please bring those to our attention.

MS. MOLLOY: But just to let you know, we'll in the meantime start just sort of reviewing it for that.

MR. MARTIN: I think clarification of the transition -- George Martin. Clarification of the transition section at the end of each section would be helpful. Also I was wondering if there -- I mean, what

I've learned today is three months after the rule is issued that is the certain date and time that Alternatives and Traditionals without PADs are gone.

MS. MILES: Yes. The PAD would apply to every licensing process.

MR. MARTIN: Post three months after the issuance?

MS. MILES: Yeah. Assuming the rule was issued in July, end of July, it would be the end of October for any projects filed -- with a Notice of Intent filed after that time.

MR. MARTIN: Okay. So if your Notice of Intent straddles that date on either side then what I mentioned previously is the case; prior to that date you can do the old Traditional and the old ALP; after that date ILP, TLP, ALP, PAD?

MS. MILES: You got it.

MS. MOLLOY: That's about as summarized as you can be.

MR. MARTIN: Okay.

MR. JOBSIS: This is Gerrit Jobsis again. Just a little clarification on the question that Jody had back there. I think the example she gave us were in the Traditional Process that's in place right now and she specifically mentioned the need for additional information

requests, and then you-all talked about you would develop transition criteria. I would hope you'd look very carefully about the fact that the up-front information gathering that you're envisioning now doesn't apply. So if you have already missed that part it would be very difficult to -- well for someone like me who may be wanting to put in an additional information request it would be very difficult to have to live with that rule if you didn't have the opportunity in the first place. I would hope that there would be very stringent, very close examination of that, how it would affect that ability to gather information in the relicensing process.

MS. MILES: Yes, that definitely has been considered and there is a discussion of that in the preamble. I don't know exactly where it is, but I'll try to find that for you. That whole fairness issue we can't eliminate something post-filing when this wasn't an opportunity pre-filing to do -- to make these changes, so that is not the intent do that.

MR. MOORE: I appreciated your direct answer to George Martin's question and I assume this is all going to be in the transcript. If there are instances where we see the language -- I believe it was referenced back here -- might not jive with what some of the things we're hearing today, we need to bring that to you in writing?

MS. MILES: It always may be that one of us isn't saying it right, too, and we'd appreciate you pointing it out.

MS. MOLLOY: If you do see something that doesn't seem to jive, if you could come up with specific language to fix it, we'd like that.

MR. MOORE: I don't know if the existing language jives with the question and response we just got, but I'm going to leave it at that and I'm going to try to look at it more carefully and submit my comments regarding that in writing.

I did have a question regarding the transition period being a three month period. It does seem like a rather short period, and if you do get hung up in that situation where you're an entity that has to develop and move into this new process you may be on the short end of the stick. I noticed with some interest that there was some discussion in the preamble to the proposed rule in paragraph 43 that some commenters had raised the issue that FERC perhaps might give a licensee advance notice sufficiently in advance of the deadline for filing an NOI with respect to each project to ensure the existing licensee is alerted to the projects of the NOI, pre-application document and any potential requests to use the Traditional Process or ALP.

I guess my first question is: when generally would that notice be expected to be given? And I guess my point is if sometime before three months then are we not, by virtue of the way this transition period is set up, almost ensuring that the first people going through this process are going to have a difficult time?

MS. MILES: You raised a point. I'm not sure we've really had a discussion around it. My sort of off-the-cuff answer is we are already looking at what projects may fall into that. I imagine if you're a licensee you're looking at it, too, and you know whether you fall into that three month period so you know -- you know, you've got time to begin preparing for that. If that seems exceedingly short then, you know, let us know what would seem more reasonable.

As far as the advance notification, there's been quite a range of time frames that have been discussed, anywhere from two years to three months. So what makes sense with that? I think what we're doing right now is to look at some of the implementation things, look at what we would need to do in order to have a letter together to go out to folks and doing a little prep work.

MS. JANOPAUL: Mona Janopaul, Forest Services. The issue that I would see for the licensee and the other stakeholders is if there is a desire on the part of the

licensee with a Notice of Intent due to say between October and December of this year to use something other than the Integrated Licensing Process. You are going to have to wait until that final rule comes out in July to see what the criteria are going to be for you to use that other process and then have a pretty short period of time to satisfy that criteria. So just something else to think about while you have all these other things to think about.

MR. McKITRICK: Vicki?

MS. TAYLOR: Vicki Taylor. I'd be interested in some discussion by the commission as well as others with regard to flexibility for projects that are in the transition period. So a project that is going to have its Notice of Intent prior to October but after today, for example, what kind of flexibility do you anticipate in the process? In other words, if a Traditional Process is being followed but the parties involved would agree to incorporate parts of -- or things that look like the Integrated Process or things that look elsewhere, how much flexibility is the commission going to want to give applicants in writing their own rules, let me put it that way?

MR. McKITRICK: Could we look at --

MS. TAYLOR: I can make a specific example. I

think Jeff mentioned earlier incorporating making parts of the dispute resolution process which could be a problem if we hadn't had the opportunity up-front as stakeholders, but that certainly wouldn't preclude if all parties agreed to doing that and doing some catchup work if need be, which would of course be no known process; we'd have to come up with a new acronym for it, perhaps the LLP or something.

MS. MILES: There is a discussion in the preamble in paragraph 228 on that and it goes along the lines of what you're saying, that if parties agree to it certainly they do come into the commission and make a recommendation. It also talks about, though, the idea that the further you are into the prefiling process the more difficult it may be --

MS. TAYLOR: Sure.

MS. MILES: -- to make that transition and the fairness issue probably becomes more dramatic.

MR. JOBSIS: Gerrit Jobsis. This three months is from the time they would be filing -- well the three months is after the new regs go into effect, but the way that would be judged is when they file their Notice of Intent? Is that what the trigger is, or is it three months from the five year anniversary or --

MS. MILES: The trigger for -- if it sticks

with this rule the way the NOPR -- the final rule is as this NOPR is, what would trigger for use of the ILP as a default would be three months after the rule is issued an applicant would be filing its Notice of Intent to relicense. So that's in the five to five and a half year time frame before expiration of the license.

Now there's one other aspect, though. There are some changes that don't have to do with which process you've used. Those will go into effect again three months after it's issued but for applications that would be filed. Say you're using a Traditional Process, in here you're going to find some changes in like 4.41, 4.51, 4.61, contents of an application; they are fairly minor changes in some instances, though they may not seem like it in other instances. But for applications that will be filed three months after the final rule is issued they would need to include those changes in the application. And that had to do with the project boundary that I mentioned earlier, costs of developing the project, application and several other things.

MR. JOBSIS: Okay. I've got a particular project in mind, but where they have filed a Notice of Intent but they have not done any relicensing activity yet and it's unlikely given the schedule -- well they don't have a schedule. I mean, there's been the filing of

Notice of Intent but no process has started. Is it just the actual -- so you're just considering the actual filing of that notice and not that they've actually done anything to prepare for the relicensing?

MS. MILES: We're triggering off the filing of the notice, yes.

MR. McKITRICK: Anything else dealing with -- we talked about -- is it a thing that would be helpful to try to build a hypothetical, George, or are you happy with what you understand what you may have to respond to?

MR. MARTIN: What we've discussed is sufficient.

MR. McKITRICK: Anything else then with transition or the panel would like to bring up? Okay. Moving right through these.

The third one that had a number of people wanting to discuss was the nexus criteria for study requests. Honestly I don't -- do you remember what that was about?

MS. TAYLOR: Yeah. Vicki Taylor. I had marked up my original version which is paginated differently, so I'm not seeing it right now.

MS. MOLLOY: In the regs or the preamble?

MS. TAYLOR: Preamble.

MS. MOLLOY: What is the paragraph number?

MS. TAYLOR: Don't know. I lost it there too.

MS. MOLLOY: Okay.

MR. McKITRICK: This is in the public notice; right?

MS. TAYLOR: Yes. What I had noticed was the word nexus appeared several times and I would be interested in some further clarification and discussion as to what constitutes sufficient nexus? I believe the phrase was -- one of the phrases was of course the nexus between project operations and effects. Project operations to include what? Does that include shoreline management plans, for example, and how long-range are the effects and what exactly is going to constitute sufficient nexus between the two? So that was going to be the question. Does that help?

MS. MILES: I can tell you where it is in here. It's used for the content of a study request, it's one of the criteria under study requests and it's number (5) on page D-61. This is in the regs itself. It says "explain any nexus between project operations and effects (direct, indirect and/or cumulative) on the resource to be studied". Now we didn't go any further to define that because it's really -- it depends on what's going on in a particular project. But the idea is that what you're doing is looking at what are the connections of effects on

a resource that are created by this project to study requests that's being asked for so that you're not having things that are way out of the realm of what's going on with this particular project.

MS. TAYLOR: I guess what I'm after is the degree of subjectivity with these kinds of things. Of course one can always make a case for overinclusion or underinclusion, and we're about to run a workshop to talk to various expertise work groups in using filter mechanisms, the commission's criteria to determine issues and study requests. And I just would love some help with regard to are we leaning toward underinclusion or overinclusion. What would be some good examples of a clear nexus and insufficient nexus would be useful. Maybe some people in the room could share some examples.

MR. BRYANT: Ron Bryant, Catawba River Foundation. Let me know if this isn't an obvious example, Jeff. The Rocky Shoals Cahaba lily is a, if not endangered, is a rare species and it requires certain stream flows past its habitat various times of the year. So I would submit that that's a very clear nexus.

MR. McKITRICK: Anybody know enough about biology of --

MS. JANOPAUL: Mona Janopaul. I just want to point out that in this book there is a discussion on this

area which is clearly a divisive issue, pages C-24 through C-26 paragraphs under study plan development, 50 through 55; and there is something in paragraph 52 which talks about the common sense test. And so there is -- like many of the words in the regs -- for example, it was noted consultations is not exactly defined, nexus is not exactly defined. I think you're right to ask for some examples of studies that have insufficient nexus, others that have a sufficient nexus; I think that's a very good idea.

MS. TAYLOR: For me that would also encompass cumulative impacts because that's another one of those woolly areas.

MS. MILES: We did point that out directly or indirectly, cumulative are in there. But it's easiest to work that out through a particular project or a particular set of circumstances. It's very hard -- this is a tension area and it's very hard to discuss it theoretically.

MS. TAYLOR: Yeah.

MS. MILES: Yeah, but it's a very important factor, so I -- our thinking was that this sort of set the parameters and that it was enough to be able to discuss it for a particular project.

MR. LAYMAN: Steve Layman. This isn't directly related to Vicki's comment, but I think a helpful criteria in the study plans and the comments for additional study

requests would be a nexus or linkage to the significant issues that have been identified during scoping. I find it interesting that the issues isn't a word mentioned in any of those lists and seems to get lost under the study request activity, that you identify significant issues during the scoping and these are the issues that are to be evaluated in the deeper review. So I would suggest it would be to improve those criteria to tie in the significant resource issues identified as part of scoping.

MR. McKITRICK: Again, anything else dealing with the transition issue -- I'm sorry, I mean with the nexus criteria? Great.

Criteria for the TLP/ALP. Is the ILP appropriate for the default? Again, I don't remember who brought that up and if there's --

MR. JOBSIS: I think I did. I'm Gerrit. I brought the first half of it, someone else brought up the second half. But essentially what -- it talks about the ILP being set out as the default which is obviously what the intent of this rulemaking is to have a new rule, so it makes sense; but it doesn't lay out any real criteria by which an evaluation would be made if it is -- if a TLP or ALP could be used, it just says the FERC will review the applicant's recommendation.

But I guess our interpretation is that, you

know, the ILP is supposed to be the improved process, we've had a lot of input, we'd hope there would be a lot of rigorous criteria to drop back to one of the other two processes and essentially that it would be demonstrated by the applicant after consultation with not only the resource agency but also the public that one of the other processes is better for the public, not just for the licensee or potential licensee but that it is better for the resource, better for that process. And again there be some clear criteria laid out by which such a request would be evaluated. That's our -- that's the issue we raised.

MS. MOLLOY: On this one I believe -- we asked this in the rulemaking, didn't we? We specifically asked if people thought there should be specific criteria and what that should be. So we certainly hope that in comments you file specifically how you envision that working and what the criteria should be, you know, for the commission to consider.

MR. McKITRICK: And that went to both the ALP and --

MS. MOLLOY: That would be with regard to -- right, it would be either or both, either different standards or different criteria to be used in choosing either; we want to know, you know, would it be the same criteria that you believe or different. But that was an

inquiry on -- right now it's good cause, and we don't specify what exactly but it would have to be reasoning submitted and the commission would choose whether or not it was appropriate.

MS. MILES: I think it's mostly also should there be criteria for the Traditional because the Alternative already has a process to move into that, and we weren't suggesting changing it and I don't think we really got any comments from anyone that we should change that, but of course feel free if you've got some now. But it was mostly should we just leave it good cause for the Traditional or should we be more specific?

MR. McKITRICK: Mona?

MS. JANOPAUL: Following up on this, Mona Janopaul, Forest Service. The question about the ALP is the off-ramp there if it becomes dissatisfactory to the parties is to revert to a Traditional Licensing Process; and under this circumstance with now three processes and the ILP the default, I guess I would still be interested in commenters' positions on what would the ALP revert to now -- or revert or change to if it's not working out well with its communications protocol or whatever else it's supposed to achieve. So I'm pretty curious as to what people think should happen. I think this has been a big hypothetical question, but I believe there have actually

been no ALPs to date, so it is very --

MS. MILES: No ALPs that --

MS. MOLLOY: No ones that have been reverted to a TLP. We've had ALPs.

MS. JANOPAUL: Thank you. Yes, we've had no ALPs that have failed and been reverted to TLPs. But were that the circumstance, what would you think about that?

MR. HANCOCK: Jim Hancock. I completely agree that there needs to be some process that's the default process, and I've had discussions with people as to what that should be. I know Nino Mascolo feels that the Traditional, he's wed to that, or whether it's the Integrated; we don't know, we're still going to find out if the Integrated is the best possible; no one's been through an ILP successfully yet, and hopefully it will be the best and these other two will go away.

But my concern is this and that is, I think that we talked earlier this morning with Ann that the criteria that are currently in place for the ALP, the demonstration of consensus and protocol should meet that good cause test; so that really doesn't change anything with regard to the obligation of a licensee, the burden on the licensee to get to that ALP process. But it does seem to add a burden that doesn't currently exist for the licensee to get to the TLP, that the applicant has to show

good cause. And my question is this: does it not make more sense to have the applicant simply notify the commission that it has elected the TLP, and if someone thinks that that's not the appropriate process that the burden is on them to show good cause why the TLP is not appropriate for that process, to shift that burden?

Because again, right now there is no burden. Assuming that burden shifts and the stakeholder opposing the TLP can show good cause, well then we revert to the ILP, which seems to me to make sense. There has to be a default process, because if somebody objects to an ALP can't show consensus, good cause as to why the TLP didn't, why the ILP is not appropriate, where do you go? So you have to have something that is the default process. But it seems to me it makes some sense to shift that burden to the opponent of the applicant's use of the TLP to meet that burden of showing good cause.

MR. McKITRICK: Any comments dealing specifically with that issue of good cause from people other than the licensees? Or from the licensees?

MR. MOORE: David Moore. I was interested in discussing this issue because from my perspective I thought that all three of the processes that we have here are intended to meet certain minimum legal criteria so that each one would be acceptable in terms of: will it

meet the requirements of the Federal Power Act? The answer is yes. Will it meet the requirements of NEPA? And will it meet the requirements of other ancillary statutory [inaudible] pursuant to those statutory schemes? So given that, in my thinking the TLP and ALP were meeting the minimum requirements but with certain specific enhancements that might provide certain benefits or detriments depending on what party you are.

And my question was: why would you use the process that was one step above the Traditional Process which meets the minimum requirements to be the default? Why would you not make the default the Traditional Licensing Process? I would concur with Mr. Hancock's comments about allowing the applicant to select one process and file Notice of Intent and then have another entity demonstrate if there is good cause to use an Alternative Process or an ILP process.

MR. McKITRICK: Is there any thought? Mona?

MS. JANOPAUL: Mona Janopaul, Forest Service. Following that line of thought then there never would have been ALP because the TLP would have been legally sufficient. You know, this is -- the ILP has been long in coming; it's not really because either one were not legally sufficient of the existing two processes, but, you know, it's been in response to a lot of public complaints

from licensees and others that the TLP is not sufficient from a cost and resource and benefit point of view. It takes too long, it costs too much, it's unclear, it's inefficient, it doesn't have a good result.

So there had been all that pressure, not because it was legally insufficient, but from various points of view. We've had direction of congress through the Energy Act of 2000, we've had direction from the president through the National Energy Policy, and I would encourage you to, you know, look at those things as to what the ILP is to respond to. And, you know, I'm quite supportive of the idea that the federal agencies are acting together on this, we've been very impressed by FERC working with us, and we think this is a real opportunity to do good service and respond to the direction and needs identified by the president and the elected representatives in coming up with a process that is more clear, more efficient, still maintains appropriate environmental review and integrates the federal government's approach to licensing. So it's -- you know, I understand your position, but if we were just to go by the fact of what's legally sufficient there would have never been an ALP, so.

MS. MOLLOY: An interesting point is there are others that believe that having three isn't appropriate,

there are commenters that say there should be the ILP and not be anything else. The commission has tried to balance. We have sought to improve the process and that's where we've developed the ILP which we really think meets a lot of needs. But we do recognize that in some cases it may not be the best approach to use, so we did want to leave open this as an option that if there was a particular case -- for one, it would resolve consensus and if there was an excellent working relationship between an ALP, we wanted to keep that, that's working very well. We also felt there would be some situations where a TLP would work and we wanted to leave open that opportunity too. So we didn't want to go to just one. But our overall intent is to improve the process because there has been considerable opinion on the current process, default process. So we have improved it, but we didn't want to eliminate. So there is a balance.

MR. MOORE: I guess the gist of my comment is it seems like we're in agreement that all three processes would meet all the requirements including the requirements of the Energy Act of 2000, Fish & Wildlife Coordination Act, et cetera. And so if that's the case we're making a change now from what the default process is and then placing the burden on the licensee. My question is: why are we making that change? I understand the need for the

new process and I think that's a fine alternative, but maybe we need to think about how to implement that. I believe Mr. Hancock's suggestion to have other parties establish good cause if they believe there is a reason for the other process to be used is not a bad premise.

MR. McKITRICK: I got about 2:30. We are scheduled for a break. Is there anything else dealing with the criteria for the TLP and is the ALP appropriate for default? Are there new issues that need to be brought up with that? If not I'd like to cross that off the list, take a 15 minute break, realizing that we still have -- plan to leave around 4:00 and have about nine issues. So I'll try to control the time a little bit closer, but I think we still got enough time to go through these in a clear fashion. Instead of taking our usual 30 minute break for a 15 minute recess, if maybe we do this in 15 minutes, get back at 2:45 and then proceed through this, I think that would be helpful. Thanks.

(Recess taken.)

MR. McKITRICK: Okay, we lost a few folks and maybe they are the ones that brought up some of these issues, who knows, but we'll go through them and hopefully give everybody a chance to flush these out to their satisfaction. The next one that we have is -- some of these actually in reading through this we've kind of

touched on in some fashion already and I think that will maybe answer some of these questions to some people's satisfaction.

A question we have up here is explore if and how the purpose of the new process will be met. And I think this was related to outcomes, is this going to lead to the Integrated Process, better outcomes than perhaps the ALP, TLP. I think that was the context of this. Was there anyone that wanted to bring that up, discuss it, flush it out a little bit more about -- are we headed towards better outcomes? I can't remember, was it Jim --

MR. HANCOCK: Jim Hancock. Again, I'm not so sure that this was something to flush out and discuss, but it was more of an observation. I wanted to make sure that was the intent of the commission in this rulemaking, not just to try and compress the time period just for purposes of improving the timing, but again in my mind you don't improve anything if all you do is compress time and don't end up with a better outcome or a better license that we all have to live with for all this time.

Because, two, if you do compress it you may not have enough of a record to resolve all the issues, and so you need more reopeners which is certainly not in the licensees' best interests and I don't think in anybody's best interests. Anyway, that was more just a comment that

I think I was a little bit concerned with when I read through this the first time. But I think clearly it's the commission's intent that there will be better outcomes, there will be a better record created and, oh, by the way, it's in a more compressed time period.

MS. MILES: That was said beautifully. Can we use that exact phrase?

MR. HANCOCK: Yeah, if you just attribute it to somebody other than me.

MR. McKITRICK: Anything else? Great.

The other thing we brought up is the PAD document talking about the contents, applicability of things that are in the PAD. Is what's in there good? Does it need more or less types of -- I think that was the context of this.

MR. MOORE: David Moore. I think I may have contributed on this one. In terms of the purpose of the PAD -- I might have this wrong, but I would think that the purpose is -- there are multiple purposes, but it includes NEPA scoping, identifying issues early on, to some extent trying to get your arms around studies. I had some questions regarding the specific requirements in there in that typically under NEPA you have a lot of flexibility in terms of determining issues; and scope and some of the provisions in the PAD appear to me -- I may be misreading

them -- that they have some fairly exact requirements that may exceed the scope of what you normally might think you'd be studying pursuant to NEPA.

And just to raise a couple of questions, this is one of the examples that I think may be out there earlier, but we asked for a general description of the river basin, so we're talking about entire river basins, I presume; and then it talks about land use and cover, I presume that's the entire basin.

MR. McKITRICK: Where are you?

MR. MOORE: I'm looking at D-51, Section 5.4, this is this would be under Section 5.4(C)(2). And I'm specifically looking under subsection (D). One thing that caught my interest was hazardous waste disposal sites. I can see it might be relevant to some particular licenses but maybe not all. And the state where I do most of my work, Georgia, we have what's called the Histol list, it's literally anything where a small amount of hazardous substance spilled at some point in the past is deemed to be a hazardous waste disposal site; and literally there are tens of thousands of those in the state. I don't know if that information is relevant. I wondered what the panel had to say about these sort of requirements. They seem pretty specific overall.

MS. MILES: They are quite specific, and I

don't have anything in particular on this. If it seems like it's not relevant, that will be in the record, certainly comment on it. We did -- the goal of this -- I'll tell you the general goal and the specifics are quite specific and that is one of the questions we're asking is: did we get too specific in some places, not enough in others? But the goal of this is to get all the existing information on the table in the beginning, because that's sort of your foundation for where you begin.

Applicants may have done studies during the term of their license, so they may have some good data on the existing status of the resource. Agencies may have done something in the area, and they may have information that they want to put in there also. So that's the point of this. The folks that put this together are the practitioners. Our staff that actually, you know, read the documents and do the analysis, so a lot of it has to do with information that they thought they needed or maybe they have needed in a particular case. So we need you to sort of level this, did we get it right from your point of view or not.

MR. McKITRICK: Mona.

MS. JANOPAUL: Mona Janopaul, Forest Service. Yeah, I was on this PAD team for the department of agriculture, but most of the people that I work with on

FERC staff on it you don't see here, they are as Ann described those who work in the trenches. Many of the specifics were lifted from a combination of what is now required in the initial consultation document or the draft or final application. So the kind of specifics like you're talking about were not created out of gold cloth but were essentially brought over by them from those other documents. So you might compare what is now required in the IPC or ICD or whatever you'd like to call it as well as the application. I think you'll find things you were talking about not too different. We didn't come up with those just for this process alone.

I want to add in again that the benefits from the resource agency point of view for the PAD -- and I would hope this would translate for the licensee as well -- the situation now is there's sort of different documents and formats for the initial consultation document and then different things along the way for others and then the draft license applications in a different format altogether. And it's sometimes difficult -- first of all I think it's expensive and then it's sometimes difficult in translating from one to the other document. What is it that has actually changed, developed, fallen off the table, been amended?

And by using this one sort of format and

building on it it would be more easy for the stakeholders involved to track what the changes were, what the developments were. So that was some of the thought. Having said all that, this was an incredibly fast rulemaking process. This was one of the things that really we would have really liked some more time to work on, so this is a very fertile area for comments.

I will say there was some suggestion at least at one of the earlier regional meetings that the stakeholder, either during the stakeholder drafting workshop that week in April or in some other way, there be a technical group convened to really go over this PAD for a group of stakeholders and what should be in it. So I appreciate that you focused in on it, it is a very fertile area for comments. Thank you.

MR. McKITRICK: Just as a comment, not as a moderator here but as a person who I guess is in a trench, this was indeed kind of a hope of giving some -- always give us some examples of what you want, and I think here's a whole bunch of examples of things that we've seen and maybe language of -- rather than saying "give us the appropriate water quality information" we tried to be more specific than that. And some of this may be what's appropriate at what level and what your project's like and comments on referencing -- we go on a list of 20,000

sites. But if there's ways to approach that it would be helpful. But again, these are things that have been seen that people would like to know something about. And if you can help us clarify that I think that would be helpful.

MR. MOORE: David Moore again. It seems like then, should we read this as sort of a list of items we need to look at and see if they are in the area or might affect a project and then make a determination regarding relevancy? Or -- because it does read like a checklist of all the things you would want to think about. But I guess my concern is that the way it seems to be written is "this is what you would have in your PAD". And particularly if you're having to do one of these first PADs I guess it raises a question of: are we going to have sections of a PAD that will have a lot of information that may not be relevant? Should we look at this just as a checklist?

MR. McKITRICK: I think if this stays in here you need some language -- I'd recommend some sort of language of how this should be viewed as opposed to everything's in here or maybe moderated.

MS. MILES: I would assume too, suppose this stays and it was in the final rule, you go down these things that are required, if one of them doesn't apply to your project you'd give a reason why it doesn't apply and

you don't need to provide that information.

MS. MOLLOY: And that would help staff in that they'd recognize it wasn't an oversight but that in fact there wasn't anything that would fit there, so, you know, they wouldn't worry about it anymore.

MR. McKITRICK: George.

MR. MARTIN: George Martin. I think some clarification on the scope of the information included in the PAD. When you say river basin or watershed, that may lead to a false impression that the information included in the PAD in regard to the river basin or the watershed has a nexus, which we have trouble with, to continue project operations. And you go down that trail, you'll never narrow.

MR. McKITRICK: Anything else dealing with PAD?

Cooperating agency/intervenor policy. For some reason, George, it seems like you brought that up.

MR. MARTIN: Yeah. I was interested in that in regard to the ex parte discussion. And I'm sorry, I don't have the background information to formulate much of a good question. I just understand from discussions with FERC folks that there has been some concern about that to this point, and maybe a little enrichment discussion would help me.

MR. McKITRICK: How this would change how we

interact from the past?

MR. MARTIN: Yes.

MS. MILES: Okay. With the existing regulations -- it's not a regulation, it's a policy -- an agency that would choose to be a cooperating agency with us could not then later in the process intervene and come in on rehearing if they disagreed with the conclusion that we might have in an order. Because of that policy hardly anyone chooses to be a cooperating agency because they are just not willing to give up their intervenor status.

Our sense is one of the other ways that we could better integrate and do things simultaneously is if another agency who might need to do a NEPA document for some reason also can be a cooperating agency with us so they can use the same NEPA documents, kind of a good government type thing is you both can use the same document.

My understanding -- and we've heard this from some of the other meetings -- is that there's concern about the kind of fairness of being able to be a cooperating agency and sort of feel like you're inside and understanding what's going on with that environmental document and then at a later time intervene. So the thing we did -- actually we're doing two things, one is regulation and one will be a practice.

In the preamble we talk about the resource sections of the environmental documents. The environmental documents the way they're set up they're typically by resource area and within that resource area there will be "this is the existing environment", "this is the issue for this resource", "these are -- this is the analysis based on the studies that were done". Sometimes we will then have a recommendation at the end of that. From now on we're not going to do that. We're simply in the resource sections going to do the analysis -- the issue identification and the analysis of that issue.

We're going to save all the commission's balancing part for the comprehensive development section of a NEPA document. So we could have a situation where we've got a cooperating agency; the first mandate is to balance. The cooperating agency may not be their mandate; they may have another responsibility. If we can't come to agreement -- we would hope we could come to agreement on what the recommendations would be through the process of working together, that would be the ultimate goal. If we couldn't come to an agreement, though, FERC's responsibility still is the best comprehensive use of the waterway, so that that would be what we would recommend in our comprehensive development section of that document. If the agency wasn't able to buy into that, they could

either choose to maybe do a separate record of decision or some sort of document that they felt was their conclusion and their recommendations.

The other thing that we are doing and are changing the regulations is to amend the ex parte regulation or propose to amend it to require that if during the cooperating agency process an agency were to come up with some additional data or study information that wasn't available in the record that that be placed in the record so everybody's got that information and knows what it's based on.

We are not proposing to have any of the discussion be placed in the record between FERC and the cooperating agency because the NEPA document will be the ultimate conclusions of that discussion and that will be in the record. So that's -- that's how we're thinking it through.

MR. McKITRICK: Would the agency still be able to intervene in these sort of --

MS. MILES: Yes, the agency would be able to intervene. That is what this changes, it would allow an agency who is a cooperator to subsequently intervene. We did have some discussion -- Mona is correcting me. If the point at which intervention is allowed, which it typically is earlier, they could intervene earlier, and then be a

cooperating agency, or have it happen at the same time; they could do both regardless of the timing.

There was some discussion about whether that should be a sequential thing, whether you should have an agency be a cooperating agency up to some point in the process and at that point have to make a choice, "okay, I'll be an intervenor from now" or "okay, I'll be a cooperator". For this rule the decision was to go ahead and let them be both at the same time, pose that change to the policy.

MR. McKITRICK: George, do you understand?

MS. MILES: Anything more?

MR. MARTIN: No.

MS. MILES: Did you understand what I said?

MR. MARTIN: Basically.

MS. MILES: Does anyone else have questions on that?

MR. McKITRICK: Okay. How best to separate significant issues from study requests. Steve.

MR. LAYMAN: Yeah, that was mine, Steve Layman. I guess just one of my observations in looking at the process, I understand why so much emphasis is placed on the study requests because of the delays that have been associated with those. I guess I lose a little bit of the thread of the NEPA process, though, in identifying the

significant issues and how those relate to the studies that are requested.

And it seemed to me in looking at it that really the PAD from the very get-go provides a lot of the information that's used in scoping, and I was wondering if any thought had been given to having that be -- have SD-1 prepared up-front with that just out of the block; so that once you've had the scoping meeting they'll have reviewed the PAD, then you can lay out all of the issues, the significant issues.

Because if you start intertwining those significant issues with the study requests I think it promotes a lot more conflict. And I think if you can reach agreement on what the significant issues are, you know, get past scoping sooner on the issues and then separate out the study requests so that by the time you get to box 7 maybe you'd be issuing SD-2 at that point. You've probably given thought to that, it's just a suggestion.

Seems to me when you talk about nexus that the issues should have nexus with the project operation and that the studies should have a nexus to the issues, significant issues. I think the issues are an important standard that the studies need to be measured against. I just suggest some thought be given to that.

MS. MILES: Yeah, you raise a really good point. We did have similar discussions that it should be issue identification and then studies. I'm thinking it's not coming out that way and I wanted to point out a couple of things and maybe this group would like to even give a suggestion. We are recommending that as a part of the PAD issues are identified in box 1. I don't know if you realize that, but that is a requirement there. And then in the scoping meeting in box 4 it also is a discussion of issues, but we didn't put the scoping document that early. Is that what you're suggesting, that there actually be a scoping document at that point?

MR. LAYMAN: Yeah, I would suggest you move SD-1 up concurrent with the PAD since you're providing all that information anyway, that everyone really can comment on and define their issues; then you can clear the identification of the issues hurdle easier, you know, earlier, and then not get those confounded with the study requests. Because I've seen a lot of times when issues are confused with actual study requests.

And I guess an example of how it's not very clear in reading the proposed rule is in Sections 5.6 and 5.10 when you were basically asking for comments. It doesn't say anything in there about significant issues; it's focused more on initial information requests and

study requests. And why I understand why that's all important, ultimately you're going to get to that. It seems like an appropriate focus early on is the significant issues. So I would just suggest maybe in those sections that you have some emphasis on those points.

MS. MILES: Thanks.

MR. McKITRICK: Anybody else like to weigh in on that? Concern dealing with local plans and requirements, shoreline management plans, comprehensive plans. Vicki, was that --

MS. TAYLOR: One of the things that -- Vicki Taylor. One of the things that prompted that question was just something I don't know and that is: is the shoreline management plan considered part of the project operations? Has that been determined at some level? In other words, if one is looking to establish a nexus between project operations and effects, does shoreline -- do shoreline management plans fit the criteria of project operations?

MS. MILES: I can't quite answer -- I don't know enough to be able to answer that question. Shoreline plans -- project operation is how the project is actually operated. If the project fluctuates so it affects a shoreline, then that's some effect on the -- that's a connection of those effects to the project operating. But

a shoreline management plan in and of itself is a plan.

MS. TAYLOR: Right.

MS. MILES: It's not an operation.

MS. TAYLOR: Yeah, and I just asked someone else who came on the other side and said "well the plan since it's an obligation of the licensee in its operation of the project and it's inside of the project boundary, is the project operation?" So I don't know.

MS. MILES: I think we might -- you've got something specific in mind which I don't know about and today isn't the forum for it.

MS. TAYLOR: Sure.

MS. MILES: So I'm not sure we could get to actually the question you're asking.

MS. TAYLOR: Yeah, because that was sort of the specific thing that triggered that particular issue, and I guess on the broader issue it was: is there any change? And I think you already answered this before, from the old regs, the Traditional, with regard to the consideration to be given local plans and comp plans, which is not the same as the shoreline management plan; but there is no significant change in the Integrated Process with regard to the consideration of county, municipal or other comp plans. Is that correct?

MS. MILES: Yeah, there is no change in the

regulations to what would qualify for comprehensive plan, and those still need to be filed with the commission so they can be on the comprehensive plan list.

MS. TAYLOR: And then in the general sense then, the relationship between any required shoreline management plan and its -- how it affects or is affected by project operations or how it relates to those other comp plans, there's nothing new we need to know about in the ILP?

MS. MILES: No, there isn't any change. You may be referring to a shoreline management plan that's a requirement of a license. That's not a comprehensive plan.

MS. TAYLOR: I know.

MS. MILES: You've got that distinction?

MS. TAYLOR: Yes.

MS. MILES: Okay. There isn't any change regarding comprehensive plans. It's the same thing to -- we haven't touched the section that talks about comprehensive plans at all. We have in various places in here with the PAD being one of them asked for identification of plans and asked agencies to identify plans that may be related to a particular project.

MS. MOLLOY: And I'm not quite sure I fully understand where you're going at, but to the extent you're

talking about the shoreline management plans that a licensee develops as part of its license, the underlying issues would be issues in a relicense or a license. So the issues that a shoreline management plan is designed to address would be issues that would be considered in the license application. So it might be how project operations might affect the shoreline or different things, but the plan itself is a method or a measure to remedy or to work with certain issues. I may not be addressing your thing at all.

MS. TAYLOR: No, I think it's a -- I think it's somewhat complicated. So where it relates is the legitimacy of a study request that has to do with the licensee's management of the shoreline?

MR. McKITRICK: That specific type of thing would come out during the scoping process. I mean, if there's an issue, a new issue, with management of the shoreline, that could be something that comes out during that. We have not -- as indicated, those are usually terms/conditions that are in a license that somebody is doing post-licensing -- not always, but it does occur. But if that's an issue, that's something that you identify was brought up. The other thing dealing with comp plans -- I saw a quizzical look -- may not have been was what -- comprehensive plans have to be filed with the

commission to be considered by staff.

MS. TAYLOR: Yes.

MR. McKITRICK: The regulations that outline what's a comprehensive plan and what is not a comprehensive plan have not been changed. But it's upon the entity that has developed this plan, it's their responsibility to file those with us so that they can be considered.

MS. TAYLOR: Yes.

MR. McKITRICK: I think what Ann said is what has been changed is that those have to be identified very early on as being on our list of comprehensive plans and put into the PAD.

MS. TAYLOR: How early on?

MR. McKITRICK: Box number 1.

MS. TAYLOR: On D-54 there's a reference to state comprehensive outdoor recreation plans.

MR. MOORE: D-51.

MR. MOORE: Are you looking for the reference to the web site?

MS. TAYLOR: Yeah.

MR. MOORE: I think it's D-51.

MR. MOORE: David Moore. Take a look at D-51 section 5.4(c)(2)(D) last line.

MS. MILES: That's it. Thank you. So it's a

list of relevant comprehensive or resource management plans applicable to both the basin and the project. It also references our web site which on that you'll find a list of all the FERC approved comprehensive plans, so you can check it out to see if it's got the plan that you're concerned about.

MS. TAYLOR: Well I don't -- specific isn't the issue here. I'm just curious as to would there then be a later stage at which a local entity could file a plan? In other words, if it's not filed by the time the pre-application document is prepared, are they out of luck on this one?

MS. MILES: No, you can file a comprehensive plan at any point.

MR. McKITRICK: At some point during I think the NEPA process if it hasn't already been identified probably staff would pick that up.

MS. TAYLOR: Okay.

MR. McKITRICK: That would be post-application.

MS. TAYLOR: Where I'm really struggling here is just getting a -- just a little more help on appropriate study requests, and another part with regard to study requests is the use of past acts and past effects to show trends if there's continual behavior or whatever. In other words, the way I read the regs -- I apologize

again if I miss things -- but is basically starting at today's date, current date, is a relicensing or a new license for this project, what effects is it going to have? But is it legitimate to use past effects to show trends moving into the future and cumulative effects based on past acts and past effects?

MR. McKITRICK: I'll give that a shot, and correct me. I think from the standpoint of -- as I understand what you're saying -- staff would look at that and they can tell the licensees to look at it, from the cumulative impact world you may need to set the stage to understand cumulative impacts from some sort of historical perspective. Those studies may be extremely general and brought up through the literature that you can pull out. Very specific past cumulative impact studies are extraordinarily difficult.

What you need to do instead of context perspective for the reader, the public and the decision-maker that would allow you to come forward to the present so that you can understand that and then with the goals of perspective of resource agencies and stakeholders move forward in that world. So I can't answer your question "is this an appropriate study?", but you may need to set the context in the cumulative impact section of "where have we come from and where are we now and then

where are we moving to?"

MS. TAYLOR: Right. Thank you.

MR. McKITRICK: I think that -- Mona.

MS. JANOPAUL: Mona Janopaul. Getting onto another aspect of what I heard said in passing was the role of local governments or county governments in the licensing process. I'm just -- I would appreciate it if particularly any licensee or licensee representative here would like to respond to the proposed change in the Traditional Licensing Process that would require increased public participation.

I haven't heard too much at these meetings on that, though there were a lot of comments saying that the Traditional Licensing Process, one of the benefits was for a licensee they wanted [inaudible] consultation requirements with agencies and tribes. You know, this proposes a sort of broader consultation requirement for the Traditional Process as well as for the ILP. If anybody here has a comment on that proposal.

MR. OAKLEY: This is Mark Oakley with Duke Power. Your question has a generic sound to it as "in all cases is that appropriate?" I can only speak for what we've done on our Catawba project which is try to go out and do something that was applicable in our specific situation and in that particular case still working under

traditional procedures we've found a way to incorporate a great deal of advanced involvement.

MR. McKITRICK: Are we okay with the comprehensive plans, local plans discussion?

We have study dispute resolution process for the ALP. We've kind of touched on that, but let's revisit it and see if there's something new we missed.

MS. MOLLOY: This is actually for the Alternative Licensing Process.

MR. McKITRICK: Right, I meant ALP. I think we had a discussion about -- did we have some sort of discussion about dispute resolution process associated with the Traditional and ALP?

MS. MILES: I actually raised this one, it's a question that we've asked in here because we now with this NOPR would have a dispute resolution process that's required to be used prefiling for the ILP and the TLP but not one for the ALP, and the ALP is meant to be collaborative. And the question was: would it be a useful thing to have in the ALP or might it disrupt the collaborative nature of it? Does anyone have any thoughts on that?

MR. McKITRICK: Any of those folks that dealt with the ALP, did you have dispute resolution processes that you developed or was it something that needed to be

done or it worked well without it or --

MR. HANCOCK: I guess I would be inclined to say there is no need for it because of the point that you made, it kind of disrupts the collaborative nature. I'm involved in a collaborative, an ALP type; we're not all the way through, so I can't tell you it would be a success story by having no opportunity for the dispute resolution early on, but my sense is it's probably not appropriate and wouldn't enhance that process. That's just my view.

MR. McKITRICK: Moving right along. Flexibility/accomodation of schedule.

MS. MOLLOY: I just have one note on this one, if you could make a little caret by the word accommodate, stick another M in there, I'd feel better. (Laughter.) I was staring at it up there and I just couldn't figure out what was wrong with it until lunch.

MR. PHILLIPS: Yes, Jim Phillips, I was the one who brought this up earlier this morning. From that rousing show of hands I could see I was close to Lone Ranger status. But having said that, in our geography on the river that we're dealing with we have something in the neighborhood of 17 facilities -- 17 dams on the river, and what drives the question is more from the opposite end.

We are proposing to do some things on the river that could potentially have some implementations to

those -- those existing facilities and we were just wanting to make sure that we had an understanding of how do we communicate to the agency -- meaning in this case FERC -- to make sure that our plans were well understood and that they were indeed posing the right questions and providing the right data for a proposed project that has nothing to do with power generation.

Am I making sense? We're almost saying: we're applying to do something other than power generation, and how do we mesh our plans with what the needs of the agency are? And how does that impact any ongoing licensing programs related to the existing facilities on the river?

MS. MOLLOY: There's one bottom line. An application has to be filed two years prior to the expiration, there is no waiver possibility on that. Now that one's absolute. So, I mean, that drives some of this, or most of it, downright all of it. But -- and you are clearly talking about a specific thing and we don't really have a sense of it. There is --

MR. PHILLIPS: To jump right to that point, we basically are talking about potentially having more human activity on the river than is historically or currently the case.

MS. MOLLOY: Are you asking about like settlement negotiations with the licensees and allowing

for time for that?

MR. PHILLIPS: No, at this point we have no issue with the licensee. Our question is: do we have issues that need to be resolved with FERC as we try and move our project ahead?

MS. MILES: I think that -- I think that this probably isn't the forum for that discussion. You may have a particular thing, I can't see yet how it really relates to the ILP. And if that's the case it would be better for you to bring it to us separate from this for a discussion and we could see what was involved. I couldn't quite get how it related to what's going on with this rulemaking in what you're saying. I mean, there's always situations when you're -- things are very fluid out there in the real world and things are changing, sometimes they're big and sometimes they're little, and how -- the timing of how they fit in and lead with the relicensing, since the relicensing does cover a five year time frame, things can change as you go along. But kind of depending on the particular situation the answer might be very different.

MR. PHILLIPS: Not to belabor this, perhaps Ron understands the situation that we're dealing with, so I think we can deal with it.

MR. McKITRICK: There's always times -- I mean

be it the change in process or an existing process, you just have to be aware of where there are schedules that allow you to comment, and those could be pre-application or post-application. There are notices that come out that allow stakeholders to comment on the process, there's NEPA documents that allow people to comment on the process. Those are certainly specific time frames that can be commented on.

After an order is issued there may be other opportunities, but there's always -- these things rarely stand still; I mean, there's changes that occur all the time. If there's something that needs to be brought to our attention specifically, I'd say do that, don't -- I mean, we want to know, so write a letter. Does that help?

MR. PHILLIPS: Uh-huh.

MR. McKITRICK: Thanks. Mona.

MS. JANOPAUL: Mona Janopaul, Forest Services. Between this question and Liz's and some others, it reminds me there were four or five major questions that we asked you at the pre-NOPR workshops last fall and one of them was: does your sense of this new process would help facilitate settlements, would it hurt the development of settlements, or would it have no effect? I'd just be interested in a show of hands. Does anybody think it would hurt settlements, this kind of process? Anybody

think it would help settlements? No effect on settlements? Don't forget -- raising your hand might help you wake up a little bit.

MS. MOLLOY: Don't forget the last category, "no opinion yet". No opinion yet? All right.

MS. JANOPAUL: Because that was a major concern of ours in developing this process is we wanted to make something that would at least not hurt and maybe might help, because we are very much interested in facilitating and nuturing settlements. So if you have an opinion later on, that would be welcome. Thank you.

MR. McKITRICK: George.

MR. MARTIN: I'll just observe that we're glad that the notion of requiring settlement agreements seems to have gone by the wayside.

MR. McKITRICK: Oh, did we leave that out?

(Laughter.)

The next to the last, timing of the 401/CZMA, terms and conditions. Gerrit may have brought that up. We'll let anybody talk about that that wants to talk about it.

MS. MILES: He's left.

MS. CASON: He's gone. He was right there.

MR. McKITRICK: No scheduling of --

MS. MOLLOY: There's a reward to staying, your

issues are discussed if you stay.

MR. McKITRICK: That's right. So absent the absentee, we'll move on.

The last one is time line. I think we were talking about: is there an enforceability along the time line if we set all these dates, what does that mean? I can't remember who -- George, did you bring that up?

MR. MARTIN: Uh-huh. In the interest of time, as you mentioned earlier, Ron, things change over time, people come and go and issues change and resources change, species recover, things change and people's responsibilities and their roles change, stakeholder groups change, there's attrition, retirement, you name it. And with time lines so much -- so well integrated into this proposal, it appears at the outset that the licensee is going to meet the time line schedule requirements and others may not due to various reasons whether it be staffing or time or money or what have you.

And I guess just in general terms, how are we going to keep all of the stakeholders on schedule when two years out the licensee must file?

MS. MOLLOY: One thing -- I'll just start. One thing we hope will help people is setting out a schedule of when things are happening. Right now it's kind of not as clear and so if people aren't watching closely they do

run into a situation of not knowing or having to scramble and so you become -- personal knowledge of a project may be more significant if you've always been on top and you know what to look for.

And with the schedule hopefully some of that will not be a problem; but you're right, there is a problem that these are tight deadlines and that people might not meet them. The licensee does have to file the application two years prior, and we hope that everyone will do their darndest to help them do that. But the process will keep moving. I think we have some steps in here that if people haven't taken steps early on we're not looking at them later. But, you know, we can't force people to participate.

MS. MILES: And also FERC will do its darndest to try to get everyone there also. That is one of the things with our assistance from the beginning and our participation, we're hoping that it will encourage everyone else to participate, that this is the ball game and this is the time to play.

MR. MARTIN: Thank you.

MR. McKITRICK: We have a good list and an excellent discussion. But as we've gone through this, is there anything that's come up that you thought about that you wish you had put on this list that you really want to

help us identify this so that we can move forward with what we're doing?

MS. MOLLOY: Look, they've started music, it must be near the end.

MR. McKITRICK: Luckily I don't have a singing voice. I would like to give anyone an opportunity if you have a prepared statement, we can -- we can do that now. Or if you have a written statement you'd like to give to the court reporter, we can do that afterwards. If not, from my perspective --

MS. MOLLOY: I have one comment. I have one comment. That is, there's a deadline of, what, April 21st for comments and that's not a -- you don't have to wait until then. I've told a few people, but. Please, if you're ready to file before then, go ahead and file your comments because we can get started looking at them before the week we have affectionately nicknamed "Hydro Hell Week" starts. People have mentioned at each regional meeting that that's a very tight time frame between the 21st and the four day meeting and we agree. So if they're ready early, go ahead and file them early. You can file electronically if you want to speed it up even more. That's all I have.

MR. McKITRICK: You're always welcome, earlier the better. Ann, did you have anything?

MS. MILES: I have two things. One, the transcript from today's meeting will be on the web site -- rulemaking web site in two weeks, I believe it is. If you want it sooner you can get it from the court reporter.

Also I would encourage you-all to come to the April 29th to May 2nd drafting session. We are going to be using all the information that we've gathered from these workshops to sort of set the agenda for that, these are the issues that people really want to work through and we are hoping with four days to get some really good work out of all of you, so we encourage you to come.

And I wanted to say I think this has been a great meeting today. You-all have really participated and given us a lot of good things to think about, so I thank you.

MR. McKITRICK: Is there a specific -- anyone that wants to make a comment or submit something to us in writing? Mark?

MR. OAKLEY: Very briefly, Mark Oakley with Duke Power. We want to say these are needed changes and we appreciate the commission's initiative on those at a very deliberate pace to bring those about. Obviously you're putting out the extra effort to create the participation and opportunities for our involvement coming down here today, so -- with a very good and timely effort,

and we appreciate that.

MR. McKITRICK: Thank you. As Ann said, you've added to this by your participation, that's what makes these things a success. Anything else or any other closing comments? We thank those that stuck with us here to the end and appreciate your participation, and it's time to go and have a refreshment.

(Proceedings concluded at 3:50 p.m.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, DEIRDRE MILLER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by, any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

_____

Deirdre Miller, CSR, RPR

Notary Public in and for the

State of North Carolina

County of Mecklenburg

My Commission expires October 23, 2006