
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. RM02-16-000

Public & Tribal Post-NOPR

Regional Workshops

Marriott Charlotte City Center

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The above-titled matter commenced at
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Reported by: Deirdre Miller, RPR

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

PANEL MEMBERS:

S. Ronald McKittrick, FERC

Ann Miles, FERC

Patti Leppert, FERC

Liz Molloy, FERC

P R O C E E D I N G S

MR. McKITRICK: My name is Ron McKitrick, I'm staff with the Federal Energy Regulatory Commission out of Atlanta. I want to welcome you-all here today for the tribal component of our post-NOPR workshop. We planned to do this informally. Please feel free to ask questions as we go along. The agenda I think will probably be adapted to what we have today, but the handout that you have there was an agenda that showed a presentation that Ann will do, and I think she wants to do this pretty informally, ask questions as we go along.

Depending upon how we finish and after everybody's questions, I think this agenda is pretty much out of -- out. So we'll just kind of accommodate what people have. But there is some important information in here from the standpoint as we go through here, there's the public notice of why we're here today, there's a copy of the NOPR, Notice of Proposed Rulemaking, in here as well as the proposed changes in the text which is redline/strikeout types of things that you can see the changes. Towards the back page there is a schedule that we intend -- that we are working off of, and just as important there's a flowchart that will help you go through this process. You may be referencing any of these things, feel free to do that as we go along.

There is a break period, there are restrooms right outside this door that are available to everyone. I think in keeping this informal context, why don't we just kind of go around the table and introduce ourselves to each other.

MS. MOLLOY: I'm Liz Molloy with FERC, and I'm the tribal liaison.

MR. TUBBY: My name is Tim Tubby. I'm with the Mississippi Choctaw Indians.

MR. RICE: Garry Rice with Duke Energy.

MS. HUFF: Jen Huff with Duke Power.

MS. LEPPERT: My name is Patti Leppert, I'm with the commission.

MR. BERG: I'm Mel Berg, I'm with Bureau of Land Management in Washington. And I'm sorry to say Duke got beat last night.

MR. KARDATZKE: I'm Jim Kardatzke, the [inaudible] for the Eastern Region of the Bureau of Indian Affairs.

MS. MILES: Ann Miles with FERC in the Washington office.

MR. McKITRICK: With that, Ann, if you wanted to kind of get started here.

MS. MILES: Sure. As Ron said, I'd like to do this informally. And if you-all have questions as I go

along through the slide presentation, it is in your notebook as well as up on the screen starting on B-1, if you want to take notes. I'm going to cover three topics, one is the chronology, how we got to where we are with this rulemaking and what's next; and a second is what is the content of the Notice of Proposed Rulemaking; and then go over a series of questions that we've asked on the NOPR.

We think that a lot of what's in this NOPR are things that we heard everyone wanted to see differently. We know also there are some areas where people may not like what's in there or have concerns or clarifications or things you want to discuss about it; so that's what we'd like to do after we're done with this Power Point presentation is to get into some discussion about issues you may have with it or even if you don't know much about what it's all about. This is the tribal meeting, and so we'd like to talk about some of the tribal things that we're proposing that are different in this rule. And if you have any suggestions for us about how we could flush those out, that would be great.

Okay. We started back in September when we issued a notice setting up a series of workshops and drafting sessions to try to ask people what they'd like to see different for licensing hydropower projects than the

way things are working right now. We had gotten a lot of issues over the past probably five years, concerns from various constituencies and from congress that the Hydro Licensing process takes too long and costs too much and probably isn't the most efficient way to go through a relicensing.

And so a number of different groups had been working together to see if they could come up with either administrative changes or suggestions for changes to regulations for ways to make it better. We had also done some outreach to various constituencies to ask what people would like, and a lot of what we heard was "do things earlier". The way the FERC process works now there is about a three year period before an application is filed where a lot of consultation goes on with state and federal agencies, tribes and others and then there's a two year period once the application is filed until it expires where FERC does its environmental work, gets any additional studies that it may need.

And the complaints that we were hearing is a lot of things were very sequential and seemed repetitive and there must be a better way where we could integrate those at the beginning, both the licensees, consultation with the various folks and a study plan development with the environmental responsibilities, the NEPA work under

the environmental document preparation and scoping under the National Environmental Policy Act. So that's what this rule is aiming at.

Okay. That was a bit of a sideline from chronology, but I know, Tim, you don't have much back with hydro, so I thought it will give you a little sense of where we're coming from.

So we issued the public notice back in September and then had a series of meetings much like these in October and November where we went out and asked folks: what would you like to see? How would you like this licensing process to look? We got a lot of good ideas from those, got a lot of good ideas from written comments that people gave us; then we also held a statement or drafting session where we actually sat down with representatives from the various constituencies and asked, you know: conceptually how would you like to see this rule? So what's in the NOPR today reflects a lot of what we've heard from people.

After the drafting sessions we worked with the federal agencies because of their unique responsibilities as mandatory conditioning agencies to put together a draft Notice of Proposed Rulemaking and then the commission staff pulled -- worked on their own for about another month to pull this together and to make these -- a

recommended rule, put it before our commission. The commission voted on it on February 20th, and that's what you see in here. That is this Notice of Proposed Rulemaking which has a preamble that gives you the background of what the commission was thinking. It also explains what we heard from other people during the pre-NOPR period, what we heard at the drafting sessions, the workshops and in written comments.

And then there's the actual regulation part of the NOPR which shows you exactly the text that we are proposing to change. After the NOPR was issued we started on another series of regional workshops and this is one of those today. We are regionally at five places around the country, Northwest, California, Midwest, New England and the Southeast. Each of these sessions has both a public meeting and a meeting for the tribes. After that we will be having another drafting session in Washington, D.C.; this time it's going to be four days, it'll be April 29th to May 2nd and we are encouraging everyone who can to come.

We will again look at drafting language, if possible, or at least certainly concepts, what in this NOPR -- now that we have words on paper, what would folks like to see done differently and can we get to some consensus solution about how you might like to see it

better than our ideas that are in here? Comments on the NOPR, written comments, are due April 21st, so it's very important to meet that date or even file them earlier, if possible. Once we finish with the workshops and the drafting sessions we will work again with the federal agencies to put together a draft final rule, then commission staff will work on their own, and our goal is to issue a final rule in July.

If you've got any questions, please stop me at any point. Okay. I'm now going to go into what's in the NOPR. There are two major things that are in there. One is it creates this new process Hydro Licensing process, which we're calling the Integrated Licensing Process because of the idea it's integrating a lot of steps that that were previously sequential. And the other change is we've made some changes to what we call our Traditional Process. Right now there are two ways for licensing hydropower projects, one we call Traditional and it's the one I explained before that has the consultation first and the environmental work second. A second is something we called an Alternative Process, and it's one that was developed a few years ago to try to get at some of the concerns that people had about the sequential nature. It's often done very collaboratively and with not so much structure. This Integrated Process is sort of an

outgrowth of concerns that we've heard from both of those and we think that it has a lot of good things in it.

With the Integrated Process we've put a lot of specific time frames in it, but generally we imagine that it may work about like this, that the first year -- and this is three years before a licensee would file their application, the first year of that would be to develop a process plan and a study plan. So it would be gathering the group together, seeing what kind of permits need to be issued, developing a process for how those can all work simultaneously and then coming up with a study plan. The second two years would be actually doing the studies and developing the application and then the application would be filed. And our expectation is that FERC would be able to issue a license in 1-1/2 years or so after that application is filed which is a good time frame.

The changes in the Traditional Process, it's increased public participation and early study dispute resolution; I'm going to talk more about that later.

And what we think this Integrated Process will do is improve efficiency and improve timeliness, and we also expect better outcomes because of the coordination of a lot of the processes; we think that it will maintain the environmental standards that we have had, had good consideration of all environmental, cultural and other

concerns, and expect good outcomes.

How it will improve efficiency is, as I've been talking about, combining the application preparation with the environmental scoping, coordinating FERC licensing with other participants' processes like a state meeting to issue a 401 Water Quality Certification and increase public participation. There's public participation throughout from the very beginning. We also think as far as timeliness that there will be improvements, one because of early FERC staff assistance, FERC staff would be involved from the very beginning, that's unlike in the Traditional Process where FERC staff is not involved until an application is filed.

The process plan and schedule, as I mentioned before, coordinating everyone's schedules and making sure everyone is at the table at the beginning. And then one of the main components of this Integrated Process is an early study plan that everyone agrees to and the opportunity for both informal and formal dispute resolution of that study plan. One of the problems that we have had with the Traditional Process is that some people may wait until after the application is filed to lay a study request on the table or to -- or if a disagreement about whether a study is necessary or not occurs pre-filing, it doesn't get ironed out there and it

may languish until the application is filed. So our goal here is to get that decided early in the process so that the studies can then be completed and at the point the application is filed all the information is available to be able to process it quickly.

This is an illustration of our expectation for the significant reductions in the processing time frames. The zero represents when the application is filed and the 24 months represents the expiration of a license. Applicants are required to file their application -- and this is law, it's in the Federal Power Act -- they are required to file it two years before it expires. What happens right now you can see by the top bar, the Traditional Process is taking a median of 47 months to process an application, so we're often having to issue annual licenses, an automatic license that continues the project operating under the conditions of the existing license.

That's not our preference and our goal with this Integrated Process -- you can see the bar there our expectation, and this is just an estimate at this point, we don't have any way yet to test it since it isn't a process yet -- but we expect that it will take around 17 months or at least we will be able to issue these licenses by the time they expire so we wouldn't have to issue any

annual licenses. The Alternative Process that I mentioned earlier is taking us about this period of time to issue, so we feel like it's a reasonable estimate here, it is based on some experience.

Are there any questions on the process? Okay. I'll forge ahead. There are some other significant aspects to the NOPR, there are really several other important points that we put in. I'm going to take each of those individually so I won't bother to read this list, so let's just move on to process selection. This NOPR proposes to leave the three processes, leave the two existing processes in place and add a third process. So now licensees would have a choice of either the Integrated, the Traditional or the Alternative.

It does, however, make the Integrated the default process. So an applicant would need to request to use either a Traditional or an Alternative Process at the time they file their Notice of Intent, and a Notice of Intent is what an applicant files three years before the application is due. They are required to do it again, it is statute, it's in our law; and they need to let us know that they do or they do not intend to apply to relicense their project.

So an applicant if they choose not to do the Integrated, use the default process, they then would need

to request it, to solicit comments, and then the commission staff would either approve or deny that request.

Another change is cooperating agency/intervenor policy. The existing policy says that an agency who would choose to cooperate with FERC in developing an environmental document cannot also intervene in the process. This NOPR is proposing to change that to let federal agencies both the cooperating agencies with FERC in the development of the NEPA document and intervene. Some concern folks had about that is kind of a fairness issue, if an agency is cooperating would they have the inside scoop on what's going on and then therefore it wouldn't be fair to others.

We are proposing to change the ex parte rule to require that if during the interaction as cooperating agencies the agency were to lay on the table some new data, new study information, that that would be required to be put into the record so that everyone would have it, everyone would know exactly what that is. We didn't propose to put sort of the inner deliberations of the agencies into the record because the ultimate conclusion of that will be in the NEPA document which will be a public document and will be available for comment.

MR. McKITRICK: Excuse me, Ann, since we had

somebody that came in late. If you'd like to just introduce yourself and include who you're with or represent.

MS. HAIRE: Sorry I was late, we were in a traffic jam.

MR. McKITRICK: That's fine.

MS. HAIRE: My name is Wenonah Haire from the Catawba Indian Nation.

MR. McKITRICK: I'm Ron McKitrick, and Ann Miles is with FERC giving kind of the overview. You haven't missed a whole lot, but we're getting into an important part particularly as it relates to tribes.

MS. MILES: Welcome. We actually are getting to the tribal consultation part, so it was very good timing. And if you have questions, you can take a look at the previous slides if you've got questions on those, we'll be glad to catch you up to speed. Also we're trying to do this informally; so if you've got questions, stop me at any point and we'll try to answer them.

The next change has to do with tribal consultation, and it's our hope to enhance the consultation from what's in the regulations today. I think we have been doing more than what's in our regulations but we want to make sure that what we're doing is what is useful to the tribes. What we're proposing is

that commission staff would initiate early consultation with any tribes that have an interest in a particular project, and we are proposing to do that very early in the process even before the licensees would file their Notice of Intent. And the goal of that would be to develop consultation procedures, to help the FERC staff understand you and to help you understand the consultation process, the FERC licensing process.

Another thing that we're proposing is to establish a position of tribal liaison. This would be a permanent position and it could deal with tribal issues throughout the commission. It's not defined in the rule at all, and we really would like feedback from you on how you might see this position could be useful to you.

Another change is advance notification of license expiration. This isn't actually written into the regulation, but it would be a practice that we would begin and our intent is that we would notify licensees sufficiently in advance of the -- the time frame for filing their Notice of Intent which I said is three to three and a half years before their application is due and --

MS. MOLLOY: Five to five and a half years before.

MS. MILES: That's expiration.

MS. MOLLOY: That's expiration. Okay.

MS. MILES: Okay. Three and a half before the license application is due, which is five to five and a half years before the license expires. The idea of this letter is to first alert licensees that this Notice of Intent due date is coming up; it's also to let them know -- and I'm going to get into the details of this -- the content of the Preliminary Application Document. We are proposing to change a bit what is the first document that licensees are -- I kind of am using "licensee/applicant" because most of them are relicenses so they are already licensees -- but this rule does also apply to original licenses, so I think I'll switch and try to use "applicant".

Anyway, it would be what's in the content of this Preliminary Application Document and a little bit of detail about process selection to make sure everyone does understand that the Integrated is a default and to choose the others, it would be a question of letting us know for what reason an applicant would choose to use a different process.

Okay. Let's go into the Pre-Application Document. The proposal in the NOPR is that this would replace what's now the initial consultation document. A lot of the information that's in the PAD is similar to

information that's required in the initial consultation document, but the format is a bit different here. One of our hopes is that starting with this Pre-Application Document things will be listed in a way that will move us easily toward an environmental document, so by resource area, what is the existing environment, what are the issues that are raised by this project, what sort of studies need to be done to get at those issues?

We are interested in your thoughts on whether the information that we're requesting in this Preliminary Application Document and for the tribes -- there is a specific section now called tribal information -- just a minute, I'm going to actually look at what it is, because it's something we would like you to look at today. It's on page D-55 and it's called tribal resources. So it's a -- you may want to at the break take a chance to read that. We are asking -- this is a section that is not required in existing regulations but we have added it here and it's to make sure that these -- any tribal resource issues or resources are identified early in the process. So feedback on this would be useful.

The next big part of the NOPR deals with the study dispute resolution topic which has been a pretty hot issue at a lot of our pre-NOPR discussions. This is an area where people have a lot of interest. We tried to

capture what we heard, but I know there's still some differing opinions so we would like feedback in this area also. The NOPR proposes a set a set of study criteria, it says "study plans should meet these various criteria" and it's things along the lines of: What are the goals and objectives of the study? What's the connection of the study needs to the project effects? What's the relationship to any resource management plans or goals? How is cost and practicality considered? And there are others.

The way the process works for study dispute resolution, you might want to take a look at the flowchart which is on the back of the yellow book and it starts with box 6 where the applicant is filing a draft study plan with FERC. There will have been previously to that some comments on what the study plan -- in fact the whole way back into box 1 with the PAD we ask the applicant to provide some draft study ideas, and then there's an opportunity for comment on it, and then there's actually a formal draft study plan in box 6. FERC would then attach to its scoping document this draft study plan, so the scoping document will have the issue identification and then relating the draft study plan to this -- to the issues that have been identified.

And then there's opportunity for comment in box

8 on the study plan, and box 9, opportunity for everyone to get together and discuss studies. If -- sometimes there are interactions among the various studies, like a recreation plan could potentially have some effects on cultural resources, so we want to make sure that that integration of issues with the study is identified and also have the opportunity to discuss any disagreements about whether it should be done or shouldn't be done.

And then in box 10 the applicant revises the study plan, and in box 11 the commission makes a preliminary determination on the study plan, issues it. If there are no disagreements with what the commission has issued then the applicant goes ahead and begins the studies. If a federal agency does dispute one of the studies -- but it's not just a federal agency, it's an agency, either federal or state, with mandatory conditioning authority; so it could be a state water quality agency who has the ability to issue the 401 Water Quality Certificate.

MS. MOLLOY: Or even a tribe with 401 Water Quality Certification.

MS. MILES: Exactly. Or a federal agency that has -- or it could be a tribe on a reservation with 4E conditioning authority. They would have the opportunity to raise that study dispute and then the commission staff

would convene a panel. And the panel would be made up of someone from FERC staff, someone from the resource agency that is disputing the study, and then a third party neutral from a list that FERC would have kept and established and we need to identify the process for establishing that list. That panel would look at the study dispute resolution in relation to the study criteria that we talked about, does the study meet that study criteria, and then based on that they would make a recommendation to the office director. Also the panel -- the applicant has the ability to file any information with the panel on their thoughts on that study dispute.

After the panel makes its recommendation the office director will make a final call on the study and issue an order on the study plan. This whole process is set to occur in a very short time frame, it's got a 70 day time frame. And one of the goals is that we're able to make some decisions on what studies are needed, to gather the appropriate information, and then to move right into gathering that information.

Are there any questions on that process? Okay.

Two more slides on the NOPR content. Let's move to the application content. There are a few new requirements that really are not related to the Integrated Licensing Process but they will be general requirements

for all applications. Some of these are things that our staff routinely asks for and we ask them to let us know what they are so that we can ask for them up-front and not need to ask for it as additional data requests after the application is filed. That's our goal is not to need any additional application -- additional information after the application is filed. We know in some cases it may be necessary, you may not be able to get information you need pre-filing, but we are certainly hoping that that's not the norm. Our interest is in gathering as much as possible early before the application is filed.

Some of the new information -- some examples of what that has to do with is: minimum/maximum hydraulic capacity, cost to develop license applications, and project boundary requirements for all applications. As it is right now we don't have project boundary requirements for minor projects, so smaller projects, but this rule proposes to change that.

Another aspect of the application content has to do with the Exhibit E which is the environmental report. That's where you -- it's really a lot of the meat of the application; it's where you've got what is the existing environment out there now, what are the effects of the project, what are the proposed measures for mitigation or enhancement, and what are the unavoidable

adverse impacts. We are proposing that that information now be filed in a form of an environmental document to we think -- two things, one it's a very logical way to think about things; and, two -- sort of a scientific method -- and two is it makes it very easy to convert that to an environmental document once it's filed at FERC.

We also have a developmental analysis section with that so that it's very clear understanding what the costs of the various measures are both in effects on generation and economic costs.

Okay. That completes the overview of what's in the NOPR. We also asked a few questions throughout the NOPR, areas where we specifically would like feedback from folks to see if we can, well, make it a little better. The questions are summarized here and I'll go through them. There is -- they are also summarized in Appendix B in the NOPR with references to what paragraphs in the rule you can find them.

Okay. The first one, I mentioned this to you, is: are the contents of the Pre-Application Document appropriate?

What if any criteria should be considered in determining the use of the Traditional Process? Right now the NOPR says good cause. Some people have suggested that it should say actual criteria. If you have suggestions on

that or thoughts, we'd like them.

Are the proposed study criteria adequate?

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

Should the resource agencies provide preliminary recommendations and conditions before the draft or the final license application? Right now the NOPR has preliminary terms and conditions and that would be from tribes also. After the application is filed and at the point that FERC issues what we call a notice of ready for environmental analysis, that's the point at which we say "okay, we've got all the information we need to be able to do our environmental document"; and so that is the point at which we in this rule ask for comments and recommendations and conditions from everyone, tribes, state and federal agencies, public in general. Some folks thought we should ask for those earlier, maybe at the point of the draft license application before it's filed. So that's what that question is about.

Another question is: are the recommended time frames associated with the Integrated Process appropriate? We know it's quite structured and some of the time frames are short. In order to get them all in in three years each of the time frames here on this flowchart are how we worked it out. But if you've got something that you think

should be different, we'd like to hear that.

Do we need to have a draft license application at all? That was a question. Or if we should, does it need to look like the final or could it be only sections?

Are the deadlines for the 401 Water Quality Certificate appropriate? What this rule says is that for the Alternative Licensing Process and the Integrated Licensing Process that an applicant should file for a 401 Water Quality Certificate when they file their license application. In the Traditional we've got it at the time that we issue this ready -- at the time we issue the ready for environmental analysis notice. So for tribes who -- some tribes are the 401 issuing entity, so where they would be, this would be an important thing for you to take a look at.

Are there any suggestions on how the regulations could be modified for small projects? We haven't proposed anything special -- anything in particular for small projects here, but we do have a discussion in the preamble.

Then lastly two questions that relate directly to the tribes. Is the proposal for early contact with the Indian tribes adequate to ensure improved tribal consultation? That is what I mentioned in the slide on tribal consultation about FERC staff going out and meeting

with tribes very early in the process. Is that the right time? Does that work for you? And we may also want to get into beyond that where further in the process how is that going to work -- how would you like the consultation process to work?

And lastly, what recommendations do you have for the roles and responsibilities of the proposed FERC tribal liaison? We are hoping that we can have a discussion of that with you today. Okay. That's the slide presentation.

MR. MCKITRICK: Are there any chances -- anybody want to kind of go back for any clarification? I know Ann asked for those as we went along, but as you look at them, if you want to -- any clarifications of the slides, I think Ann would be glad to do that.

Okay. Want to take a 10 minute break and then get back and get into the crux of this and see if specific kinds of things outside of these slides you may want to talk about. Liz has all the answers; right?

(Recess taken.)

MR. MCKITRICK: The next part of this is actually talking to you-all and find out what kinds of concerns you may have. Liz Molloy is going to lead us through this.

MS. MOLLOY: Basically looking, are there any

questions or issues that you-all want to explore? And we're happy to explore. We do -- as we stated we do want ideas on what would be helpful for a tribal liaison to do or the role for the office to have and any ideas you have on that. There is a time for comments that they can be filed, but to the extent we can discuss anything today that would be great too. Any questions, comments, concepts you want to explore? Jim? Tim, do you have any?

MR. TUBBY: Yeah, when you say concepts behind the tribal liaison, what are they looking at as our roles and responsibilities?

MS. MOLLOY: So the tribal liaison role, that will be a good thing. Any other issues we'll put up there and go through and talk about. The notification time before the NOI, it might be good to talk about how much time might -- it might be a good idea to talk to tribes before the licensee issues a notification, sort of how much lead time would be appropriate, how much might be too much, how much might be too short. Any other issues? Those are two I just thought of. Go ahead.

MR. KARDATZKE: A couple things you probably need to think about if you haven't had a chance to look at the rulemaking, the rules that are in there, one is on many of the -- there's dispute resolution in there, what they're asking for is 30 days is the input time. And is

that an adequate time? Especially because a lot of it has to do with a study, they can start forward -- it doesn't mean you're dropped out, but they can start forward after 30 days, that may be an issue that I can see. Some of you are shaking your head no. And that's why I raised the issue, that's something that needs to be brought forward to the commission that if that's not adequate what -- for you what would be adequate? I've already tried to tell them that what is adequate for one tribe may not be adequate for another tribe depending how you're organized in that.

MS. MOLLOY: Response times.

MR. KARDATZKE: Response times. I'll also ask you to look through the changes they're making, where they add the Integrated system, you'll see they add the shareholders on the very same line they have the Indian tribes, look at that in terms of your sovereignty and your position in this cycle, you might want to look at that.

MS. MOLLOY: Stakeholder?

MR. KARDATZKE: Yeah, stakeholders.

MS. MOLLOY: I don't want them looking for "shareholders".

MR. KARDATZKE: It's basically reference to status of the tribes and their position.

MS. MOLLOY: Any others?

MR. KARDATZKE: The disadvantage is I don't think they've really had a chance to read the document.

MS. MOLLOY: If you think there's things we should talk about, though, I'm happy to -- this gets us going.

MS. HAIRE: I'd like somebody to explain coastal zone management entity, that seems to be -- at least with feelings we've had -- very -- nobody wants to claim it, yet it comes under a federal and semi-quasi sometimes it's study --

MR. McKITRICK: Sorry, I heard coastal zone management, but I didn't understand --

MS. HAIRE: Coastal zone management, how does it work? Who is over it and who -- is it always just state or is it a federal tie-in or what? We've batted heads quite a few times on trying to find information and nobody seems to know who they are and who's over them.

MR. McKITRICK: It's congress but it's delegated to the state.

MS. MILES: It's like 401.

MS. HAIRE: Does it have any federal tie-in?

MR. McKITRICK: To commerce.

MS. MILES: Let's put it on the list and we'll discuss it in more detail.

MS. MOLLOY: Any others? If not, we've got a

few things here.

MS. MOLLOY: With this list -- if we think of anything else as we go through it we can add to it, but with this list we can get started.

Tribal liaison. We don't really have a form to this yet. What we are thinking, and it's been raised several times, is that the FERC needs someone that tribes can contact for information to make it easier to interact with FERC and from whom the tribes can learn deadlines, times that things are coming up. So that's one purpose that we see for it.

Another one would be so that FERC can learn how tribes work and how we need to interact with particular tribes in a proceeding so that there's sort of an education component from both sides, how the FERC process works and how the tribes process works. There's a link that is a definitive link between tribes and FERC so that it's easier for a relationship. But other than that, we're seeking input on what tribes need it to be. You know, how do they envision it? Should it be one person? Should it be an office? Should it be for each project? Should it be for a region? You know, exactly what would meet the needs of different tribes. So that's sort of our question. Does that help?

MR. TUBBY: Just thinking about some of the

process in other areas, it seems like it's better when you have an office in kind of each region because people say "well it costs too much from me to go from the West Coast to the East Coast". It would be easier for somebody that was out there that knew that area.

MS. MOLLOY: So just sort of in a Southeast region or Northeast region, that kind of break-out.

MR. TUBBY: Like BIA, you know, they got the Eastern region.

MR. KARDATZKE: Realize cost to the tribes is a very significant factor, many tribes don't have a lot of money.

MR. TUBBY: That's right.

MS. MILES: Are you talking about cost to participate in the licensing process, that that's the issue?

MR. KARDATZKE: Or just visit.

MS. MILES: To visit.

MR. KARDATZKE: We're trying to set up an environmental conferences, as an example. Part of the funding is that we will provide each of the tribes a fund site for their tribe because if we didn't they most of the time wouldn't be there because they can't afford to be there.

MR. TUBBY: I think a lot of different agencies

like he's talking about, usually the agency that's holding these conferences they had to set aside some money so these people could travel.

MS. MILES: I think one of the ideas for the tribal liaison is that they might come to you and learn about your tribe and then give an opportunity to learn about what this licensing process is all about. We've had a number of tribes in the Northwest ask us to come out to their area and give them "FERC 101". I mean, for them to participate they need to understand what it's all about. And so this person would -- might not do them all but would be able to make the connection to get people who would be the appropriate people to be able to do that. So I guess that's one of the questions, is that down here something that would be useful?

MR. TUBBY: I think, you know, it would probably be great, but you think about, what is it, 500-some tribes that you'd have to go visit.

MS. MOLLOY: 600.

MR. TUBBY: And you're going to try to make all those? Basically what I see is that they start pulling back and say "hey, we can't afford all these trips, you're going down to visit every tribe".

MS. MOLLOY: There's over 600 federally recognized tribes and there's some others who aren't

federally recognized, but some state recognized and such, but not all of them have a relationship or are affected by hydro projects, so it is a smaller number than that. And not all of the hydro projects are occurring at the same time. So I recognize that that is a concern, that it would be overwhelming. We want to try to find a way that it's not overwhelming to us but it works for everyone involved. So we want to find a way that we can reach out and get the information on the effects on the project and get the involvement; we want to do enough that we're able to do that effectively. And so I do recognize your concern that there's so much, so we want to find a way we can do it while not overwhelming.

MS. MILES: And maybe the question is not so much, you know, how it should look but what you need it to be. What would help your participation in the process be more effective? How could this tribal liaison help you with that? I mean, not do it for you, but help it happen. And you may not have ideas today, but it might be something that you want to think about and provide written comments.

MR. TUBBY: Okay.

MS. HAIRE: I kind of like the idea -- I understand being concerned about being overwhelmed and that definitely -- I understand about being overwhelmed,

that could be a problem, but I also like the idea that FERC would come to the tribes that had the problems. Because I'm thinking at the [inaudible] meeting that we go to, some of the tribes talked about the water issues they've had up North, and it would be nice for once for the liaison to come to the area to see what that particular tribe is dealing with.

Because the frustration is not only is the tribe having to battle this and get things right the first time, but when they're thrown in the mix with a lot of tribes sometimes their particular issues get lost. Not saying that they're not important, it's just that they're not sure how to address it. And if someone comes to the area they're going to be focused in, "okay, this is what we see, our problem, how do we tackle this, what's the best place to start?"

MS. MOLLOY: How much -- one thing we've been exploring is that we'd have a meeting ahead of time, the tribal liaison would somehow arrange a letter and a meeting early on in the process before the licensee has even announced that they are seeking a relicense, to meet with the tribe and to find out what process would work best and sort of what the time constraints are, what the issues are, what will be involved. Do you have a sense of how much time before the licensee's notice would be a good

amount of time? Would a year be adequate? Would two years, three years? Or a sense of maybe not what would be long enough but what would be too short from your own experiences?

MS. HAIRE: 30 days is definitely too short, I'll tell you that right now.

MS. MOLLOY: Okay, 30 days is too short. See, I knew there would be a feeling right off what was too short.

MS. HAIRE: You know, sometimes for a general meeting, where they'll discuss their business at a general council meeting, may not meet but twice a year. We just had that with one of the Army Corps meetings that we were talking about, they were saying they couldn't get back to them for at least four more months, you know. We don't happily have that problem, but we have the internal problem of the right hand needing the left hand to know what they're doing so we can call in natural resources, the people that deal with water quality, people that deal with cultural resources and all the different entities to get them to find time on their calendar to sit down and say "what are the issues?" Because there may be no issues, you know; but if we haven't had the time to get together then we're not going to be able to help.

MS. MOLLOY: Tim, any sense on other projects

you've worked on, not hydro but other types of things?

MR. TUBBY: Only reason it's taking me so long is I'm not familiar with the process, I don't know what all is going to go into the beginning.

MR. KARDATZKE: You're looking for some type of a decision, input. She asked what would it take to bring together the appropriate tribal members or to get back with the decision. Because that's what Wenonah is referring to, it may take six months before they even get a meeting.

MS. MOLLOY: Just sort of establish a process or to identify issues and maybe establish a process that would be used over time. We have -- once the process starts we have some tight time frames as was pointed out and certainly we want comments to the effect of whether those meet needs. But to the extent that we can meet ahead of time and set up a way that would best help mesh into the process, if we can identify things early on that would need to be addressed and somehow try to, you know, establish a process that might help fit into the process, we're thinking that might help.

We'd like to know if we're thinking correctly if that would help or not. But to the extent that might help, how much time would that need to kind of set up and kind of meet, identify issues, and try to work out -- you

know, what would be a workable way to work on a particular project.

MR. TUBBY: Give you a short answer. The longer the better. Because you have to have, like she said, approvals; you have to get people together to meet.

MS. MOLLOY: How often -- do you have a time frame on a regularly scheduled type meeting or is it ad hoc, you know, as things come up, or?

MR. TUBBY: I think the tribal council tries to meet every quarter maybe. I mean, there's a scheduled meeting. But they'll have some other meetings that just whatever they're going to talk about, special meetings. Then of course you have to look at ours, then you got the chief who is separate from the tribal council so he has to notify the people that he needs for this meeting, the departments and all that.

MS. MILES: I had a question for you on this early meeting. Is it -- I think one of the goals of it would be to understand that for the individual tribes, to understand how your process works. Is everyone able to share that? Is that something that tribes are happy to share with us what their process is and see how it would fit within the licensing process?

MR. TUBBY: Maybe. I mean, I -- you'd have to tell me, you know, how this process goes because --

MS. HAIRE: I think a lot of the tribes would, they're used to dealing and interacting with government entities. But as far as where the framework of the meeting takes place, I know for our tribe no one other than a tribal member comes to the tribal meetings; and sometimes I was on the side of the one that wasn't because it can get pretty hot and heavy. But many of the tribes, even the ones that have closed sessions, will have special meetings to get, you know, these type of issues done.

Once we get our tribal entities together -- and Jennifer, we've worked with her many times -- we can get back usually within about 60 days on the issue. And as long as it stays out of the legal realm and we don't have to bat things back and forth, you know, giving ourselves 60 days is very ample time. It's just getting the people to sit down at a called meeting, those that don't show up, track them down and bring them up to speed; then having our discussion and then getting back with the entity. But, you know, that means somebody does the legwork because unfortunately it would be nice -- as it is with our tribe -- if you call a meeting and all that was supposed to show up showed up.

MS. MILES: I have another question for you. At this initial contact who would it be for your tribes -- I realize I'm sure it varies from tribe to tribe -- but

who would be the person that would -- where would we go for that initial contact? Is it --

MS. HAIRE: Well government relationships you have to start with the chief or the governing body of the tribe; then a wise thing that we always say -- and they will even say it themselves is -- at least with our tribe they do -- to carbon copy the [inaudible] offices, the tribal [inaudible] preservation office, and we take it upon ourselves to make sure we contact the --

MR. McKITRICK: We're having a hard time -- sorry to interrupt, but we want to make sure we can hear.

MS. HAIRE: We take it upon ourselves through the tribal [inaudible] preservation office to contact all the tribal entities. We don't expect people who aren't members of the tribe to have to take their time to find all the different departments. Sometimes it's confusing to us to try to find where they're at. So we do that on behalf of the agency that we step in for.

MR. TUBBY: I think basically our process is the same way. You probably if you started out, just notifying, talk to the chief, find out who he would want to be notified also to be carbon copied, that way you'd -- because he's got a lot of papers that come through his desk and he'll get to it after a while. And then he'll say, "okay, let's go", then the other person can remind

him, say "hey, this is important".

MR. KARDATZKE: You do realize the various BIA offices can help you with points of contact below the chief?

MS. HAIRE: Yes, I count on it.

MS. MOLLOY: Response times. In our rule we've identified a timetable, it's very tight, we know that; and to the extent you can provide responses on that, that is wonderful. I mean, if you identify where there are issues. One reason it is so tight is while working within the -- as Ann said earlier the statute requires that a licensee notify -- notify FERC that it will be seeking a license, a new license, between five and five and a half years before license expires and they're required by statute to file a license two years before the license expires. That leaves three to three and a half years.

And so this flowchart that's on the back cover is designed to fit within that time period, and FERC staff took a crack at coming up with these time frames to make it better and it is admittedly tight. To the extent these time frames might not work and you seek to, you know, -- tell us that and please do. If you can find a way that it still fits in that time frame that would work for you, that would be helpful to us because that is -- that was our constraints we were working with. So if there's

alternatives, if it's that it doesn't work, if there are ways that something could work we would love to hear what it is. We are certainly open to adjusting things. It's just that was our best crack at making it work.

MS. MILES: I have a question in that regard.

The idea is that we do this early notification, and from that and maybe subsequent meetings that come out of that the goal is to put together a schedule for that three year time frame or at least for that first year about when people will comment on study plans and do these various things. We put specific time frames in here, but if in a particular process they needed something different there would be some flexibility. But really the goal is to get that study plan together within the first year so that then there are a couple of years to actually do the studies.

So what I'm wondering is with this early contact with the tribes would there be a willingness to commit to a schedule that was laid out jointly for participating during that early time frame to get the study resolution, the issues identified and the study plan in place?

MS. HAIRE: In the consultation process, as we know, there's a number of different [inaudible]. What frustrates us to no end is when we get called in at the

county and then told "oh, by the way, you got 30 days to respond". Now there's probably somebody in the room from this entity or knows somebody -- and I know a lot of them, I love them dearly -- but the one agency that drives me up the wall is the Army Corps of Engineers. We get sent paperwork as public notice an action that will come through that could greatly affect us and we are not only given -- not given 30 days we're given 15 days to respond, and half the time they didn't send the paperwork and they say "look it up in the Federal Register or find it in the" -- whatever, you know.

Those type things really bother us, you know, and sometimes it's sort of like, okay, this is what the law says as primary consulting parties; and therefore it's not that we couldn't rearrange our life to get it within 15 days, but when we're given that much disrespect we're not going to rearrange our life. And if we knew ahead of time -- I like the idea of FERC being available to ask questions for, you know, far out in advance.

We work with Duke and have had a good relationship over the last, you know, quite a few years and we talk frequently about things that we're worried about or concerned that might would affect us, and Jennifer will call back and give us the answers that she can. So it's not that we're not talking with all the

parties involved. It's just we'd like to know early on about this, give us time to mull it over, come up with the ideas.

Jim's called us several times and said "well, have you thought about this?", which in some instances we've called him back and said "we're kind of concerned about this", and come to find out it wasn't even an issue we needed to be concerned about. So if we're in the process early, then a time frame is not going to be a problem for us, the Catawbas. I cannot speak for any other tribe, but for us that wouldn't be a problem. We can find someone within our agency or departments to spearhead it so that -- for Jennifer, it about drove her crazy at first trying to get in touch with 40 different offices. But to be able to take the bull by the horn so to speak to say "we'll track this down, we'll make sure the executive committee knows this, we'll make sure the chief gets word of that". So we can work within time frames, we'd just like to know for courtesy ahead of time.

The other issue, for two years, three years, I lose track of time, there have been notices to come to the public meetings in and around our area about this whole process, but unfortunately what we found out is quite often they were wanting to use the tribe to get their issue pushed forward or maybe put a road block up because

somebody has some particular problem. And we weren't comfortable being utilized that way. We would rather deal as primary consulting parties and come forward and say, "okay, these are our concerns". It's not that we're not concerned about the other, it's just we can't take on any more than what we've got now, so. I don't know if that helps or not.

MS. MILES: Thanks.

MR. TUBBY: To answer your question, yes, I think we would be willing; if we came together, everybody sat down and laid it out, we could follow the time lines.

MS. MOLLOY: One thing, we're setting up a schedule, we're hoping that helps everyone, if they have an idea ahead of time when things will occur. And on the study schedule where we're setting up an order where these certain studies are going to be done and when and certain touch points, we're hoping that helps everyone actually because it's not as uncertain; there are certain things built in to maybe give more certainty to when things would be occurring and how much would be occurring.

MR. TUBBY: Is there something in place that says a year from now we'll come back and revisit this and see if this works?

MS. MOLLOY: Yeah. First there's the study plan development, then there's the first year of study,

then there's a meeting time to sort of assess where things are, if the study is in the right place, keeping with the right things, then a second year of studies. So there is kind of a touch point on is it going as planned and where everyone is. So we tried to set that up.

MR. KARDATZKE: I think the key -- the key is going to be the notification before. How much time is adequate? Because that's obviously going to be with the chiefs and council and them to make the decision to get their staff engaged. Because obviously the staff could respond in a timely manner. What takes the time is when you got to invoke the councils in that. How much time is adequate?

MS. MOLLOY: And not too much so that it's --

MR. KARDATZKE: Is it 6 months? 1 year? 18 months? 2 years? Before this process even starts is what we're talking about.

MS. MOLLOY: And that would be something -- you don't have to answer now, but just think on that. Because that would help us, too, to establish the procedure that we -- when we jump on and get going. Because we don't want it to be too long or too short. We sort of want a range of where it would be.

MS. HUFF: Let me ask a question. Do you guys envision the applicants being involved in any of that

process at all?

MS. MOLLOY: Well certainly the studies.

MS. HUFF: Obviously.

MR. KARDATZKE: It's going to be case to case.

The reason why I say that, this is the position is it is a government to government consultation. Some of the tribes, nations, will allow that, will allow FERC to delegate that very easily to that. We've got some where they work very closely with the applicant and are very comfortable with it. There are others that to maintain their -- it's a sovereignty issue, they want to work government to government and they don't want to -- it's not that they don't like you, it's a positional thing.

MS. HUFF: So would the applicant -- would FERC be coming back to the applicant trying to negotiate the schedule? Or would it solely be a conversation between the tribes and FERC?

MS. MILES: I think as Jim said it's case by case, but the schedule of consultation with the tribes is going to need to fit into the schedule of consultation for everyone. So I think our hope -- that is what the Integrated Process is all about is that they're all in there. You know, they may not be exactly at the same moment, but that they are integrated enough that the goal of having a study plan done by the end of that first year

is the goal of everyone.

I think that part of working out the relationship between the commission, the licensee, and the tribe is going to be the tribal liaison, that that may be one of their roles is to help figure that out at the very beginning. Where the tribes are very willing to meet with both commission staff and licensee, that probably might be our preference at the beginning so everyone can hear what's going on.

What our experience is is that some tribes really don't want the licensee there at the first meeting, they want -- the tribal chief wants to talk to one of our chiefs and just understand each other a little bit before they're willing to participate in the process. I can't speak for any tribe, I just know we've had that experience where one of our office directors has gone and met with a number of either tribal councils or chiefs and then after that discussion and sort of better understanding of one another, and then they've been willing to have the licensee designated as a nonfederal rep for continuing consultation.

That's a little bit of our experience. But certainly it's got to be integrated; I mean, the licensee is the one who's going to be carrying out the studies and -- but there's FERC scoping in there and -- so it's --

we are going to have to work through how all this works together.

MS. LEPPERT: My name is Patti Leppert, I'm with the Federal Energy Regulatory Commission. And to continue with Ann's comments on this interaction, what has helped us at the commission is to attend various cultural workshops that various tribes have developed and conducted and we as commission staff have been invited. For an example, one of my colleagues, John Castello, was invited by the St. Regis Mohawk Tribe in New York for a cultural resources workshop that was conducted by the St. Regis a few months ago with Jim Kardatzke; I was invited by the Tuscarora Nation in New York to attend a cultural resources workshop by the Tuscarora Nation and that I found to be very, very helpful for us at the commission to understand the individual tribes that can be associated with these various hydroelectric projects around the country.

So that's something that tribes sitting around the table here may want to encourage more so that we at the commission can understand the tribes and help you during this process.

MS. MOLLOY: Any other ideas on the notification before the NOI or response times to things? Did we answer your question?

MS. HUFF: Yes.

MS. MOLLOY: Reference to tribes and their positions as stakeholders. In the rule there are references to consultation and various notifications and involvement by several parties, and I think what is brought up is in some places it will be listed the different groups in sort of one area, one sentence. And does the -- would it be better to list tribes separately as another bullet without tying to other parties, other stakeholders, if it would be -- some tribes have indicated they would prefer to be called out separately because of the distinct relationship; that rather than tribes, governmental organizations, states -- you know, that they be called on a separate line pretty much. And so this is a kind of question on how you feel about that or, you know, do you have an opinion on that type of reference throughout the rule.

MR. TUBBY: Just my opinion, yes, you would state tribal --

MS. MOLLOY: I think I have an example marked.

MS. MILES: There is an example on D-45. I don't know if that's the one you want to use or not, but it does -- it says in there, it talks about requirements to consult and says "before an application would be filed", and then it lists "federal, state and interstate

resource agencies", and it mentions some specifically by name, and then it says "any Indian tribe that may be affected by the project, and members of the public".

MR. KARDATZKE: Yes.

MS. MILES: So what it's listing there is everyone there. Let us know if this doesn't do it for you, but there was absolutely no intent to equate tribes and public because it's set off by commas. It's federal and state agencies; federal agencies is one group, state agencies is another group, tribes is another group, the public is another group. So the intent was that those four groups are the primary constituencies that need to be consulted within this process. And throughout the rule, that's the way it's listed.

And the question is: being listed like that, does that work for you or does that not work for you? And if it doesn't work for you, what would work?

MS. HAIRE: Well, I'd be crucified if I didn't speak up on behalf of our tribe, but there have been elders that have gone before us that have fought many, many, many years to get the recognition of government to government and the sovereignty issue. I think all of us in the tribal realm that the workload ends up in the different departments, so that part we're very well -- we understand what you're saying here. But anytime something

is in publication it's always told to us that we have to be very, very careful to make sure that point is driven home all the time; it's a government to government relationship.

Because we get -- a typical example is dealing with the cell towers, we'll get someone that's done consulting work for someone and they'll say "well, hey, aren't you in this same line with the general public?" And then it's like here we go again. One of these days I'm going to type this out, have it ready and I'll just fax it to you, you read it. But anytime something is in print it needs to have the tribes on a government to government relationship and separated from John Q public.

MS. MILES: Okay. So the idea would be that a separate sentence that recognizes the need for consultation with the tribes.

MS. MOLLOY: Would your tribe have a similar opinion or differing opinion, do you know?

MR. TUBBY: Similar.

MS. MOLLOY: Similar? All right.

MR. KARDATZKE: To tell you the truth I can't think of a tribe that wouldn't have the same opinion, to be honest. Patti knows in New York we were just lectured about this on protocol, so.

MS. MOLLOY: All right. Here is the real

tricky question, CZMA, how does it work. Excellent question.

MS. MILES: I'll start. I haven't worked with it in the Southeast; I've worked with it a whole lot in the Northwest.

MR. TUBBY: What is CZMA?

MS. MILES: Okay. Yeah, good question. It stands for the Coastal Zone Management Act, and it is one of the other acts that needs to be complied with in issuing a license, FERC hydro license, a license for a project that's regulated by FERC. I think -- three of us down here think it's commerce, so I'm pretty sure that's right, that it's under the Department of Commerce.

But like the 401 Water Quality Certification they delegate to the states the responsibility for coming up with a plan as to how they want to carry out the act itself. Most states that I've dealt with you can find their plan and there is a designated part of a state agency that's responsible for carrying that out. I don't know the case in your specific situation, but if you want to call us separately we'd be glad to look into it in your case.

Many of them, the states, have a designated coastal zone with specific requirements for projects that are within that coastal zone. The way the act reads is

"within the coastal zone or affecting the coastal zone".

So if it's a project that's not actually in the coastal zone, yet because of the way it operates affects the coastal zone, that also could implicate the need to comply with the act.

What we need to do is to look at -- let me step back. What an applicant needs to do is to ensure consistency with the act and so they need to go to whomever in the state is handling this and with information -- and it's what would be required in the state's plan, regulations, for information either saying that their project is or isn't consistent; and then the state makes a finding on that. And sometimes they'll just say "yes, we agree you're consistent". Other times they may include in the consistency some sort of a requirement, and then we'll look at that as to whether it needs to be required in the license. That's generally what it is, if anyone else at the table wants to add, please do.

MS. MOLLOY: I think she pretty much summarized it there. Did that help?

MS. HAIRE: Yes, that did help.

MR. McKITRICK: Within the state of South Carolina -- I don't know about Mississippi at all, but in South Carolina there's an agency for the 401 and there is one for the CZMA. In North Carolina, they are the same.

If you need specifics with that, I'll give you my card and we can work through that.

MS. HAIRE: All right.

MR. McKITRICK: South Carolina has a little more problems -- I shouldn't say more problems -- they have different time lines between the coastal zone and the 401 and it confuses us and I think it confuses them, but. North Carolina works pretty well.

MS. MOLLOY: Now having talked about the questions we identified, have any other questions come to mind? Any other issues you want to raise, ask us, tell us about? We can -- we can take another 10 minute break if people just want to think and see if there's anything else.

If there's nothing else, I don't know that we have any more. We've gotten some excellent input from you guys. We hope we've answered some of your questions. But I just want to make sure we cover everything that we could because we are still here and available. So we'll just take 10 minutes and try to think if there's anything we can think of that we haven't covered that we'd like to, come back and we'll continue or we'll wrap up, whichever is appropriate.

(Recess taken.)

MR. McKITRICK: Since we've had a chance to

break and think about the questions that are pressing on our minds, let's see if Liz can elicit those from you.

MS. MOLLOY: All right. Now you've thought. Is there anything else we should talk about today? We're here and we're willing. All right. So we've covered everything? Apparently not, but -- well we've covered a good chunk of stuff, so. I just want to thank you for coming and helping us out. If you guys have comments, if you think of other things to say, please write them in. You can file electronically. The instructions are in the back of the rule which is Section C, I think, is the preamble and it's at the back of the preamble how to file.

The deadline is April 21st, you can file early, no penalty to filing early, and it will give us a little longer to read them and digest the comments before our drafting week which is four days of enjoyment that will be in Washington. So feel free to comment, and thank you again for coming.

(Proceedings concluded at 11:28 a.m.)