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FEDERAL ENERGY REGULATORY COMMISSION

HYDROPOWER REGULATORY EFFICIENCY ACT OF 2013

DOCKET NO. AD13-9-000

FEDERAL ENERGY REGULATORY COMMISSION
888 FIRST STREET NE
WASHINGTON, D.C. 20426

THURSDAY, MARCH 30, 2017
12:00 P.M.

APPEARANCES:

First Panel

Rachel McNamara -- Chair

Timothy Furdyna

Commissioner Colette Honorable

Ramya Swaminathan

David Hamilton

Stephanie Hayes

Carrie Allison

Jennifer Ryall

Carol Wasserman

Dustin Hahn (by phone)

Vince Yearick

Chairman Cheryl LaFleur

William Little

David Brown Kinloch

Paul Jankel

Second Panel

Ryan Hansen -- Chair

Carl Borgquist

Mona Koerner

Amy Klein

William Little

Thomas O'Keefe

Carol Wasserman

Kyle Jones

Paul Jankel

P R O C E E D I N G S

MR. FURDYNA: All right, is everybody ready? Good afternoon and welcome to the Commission's workshop to solicit public comment on the effectiveness of the tested two year pilot licensing process for hydropower projects and nonpower dams and closed loop pump stored projects under docket number AD-13-9-000 as required by Section 6 of the Hydropower Regulatory Efficiency Act of 2003.

My name is Timothy Furdyna. I'm an attorney with FERC's Office of the General Counsel, Energy Projects Division. I'd like to note that although the Act affects -- other aspects of hydropower authorization, today we will just be discussing what is required under Section 6.

In addition, I'd first like to thank all the participants for being here and on the phone today for what I'm sure will be an informative discussion.

We're going to begin the workshop with some opening remarks from Commissioner Honorable, after which we will introduce the FERC staff that are with us. And then we'll go up with the ground rules for the workshop and provide a brief summary of legislation and subsequent licensing process that brought us here today.

Our panelists will introduce themselves at the beginning of each panel session. During our first panel, we'll be gathering your comments regarding the effectiveness

of the tested two year pilot process, which was the Kentucky River lock and dam number 11 hydroelectric project, project number 14276, located on the Kentucky River in Estill and Madison Counties, Kentucky.

During our second panel, we'll be discussing the practicability of implementing a two year process on a national programmatic scale. Sometime a little later this afternoon, we also hope to hear from Chairman LaFleur.

A couple of quick reminders before hearing from Commissioner Honorable. Please turn off all cell phones as they cause interference with our audio-visual equipment. No food or drinks other than bottled water are allowed in the Commission meeting room. And while it was not included in the agenda, we do plan to take a brief 15 minute break following the first panel.

Bathrooms and water fountains are available outside of the room at the back of each of the elevator bays. Let me now turn it over to Commissioner Honorable for her opening remarks.

COMMISSIONER HONORABLE: Thank you and good afternoon, everyone. And again, we're recording good afternoon and thank you, Tim. It's an honor to be here with you for this important topic. I want to thank those of you who came from near and far. Hence our noon start time to be friendly to those travelling from the West Coast.

As you are aware as part of the Hydropower Regulatory Efficiency Act of 2013, Congress directed us to determine whether we could develop a more efficient licensing process for certain projects at existing nonpowered dams and closed loop storage facilities. And in my opinion, this should be low hanging fruit for the hydropower development sector. We've gone through the pilot stage now as mandated by Congress. And we're here today to ascertain really and learn what went well, what didn't, and what we can do to improve the process going forward.

We at FERC certainly recognize that we have many interests to balance in the licensing process. And this is because hydropower projects have considerable effects of the environment, both -- for some to be perceived positively and negatively. Balancing all of these interests and the stakeholders involved is not a quick or expedient process, but we're aware that the process can be costly and that those costs can have the effect of reducing hydropower availability.

Although we can't compromise the quality of our work, we are always looking for ways that the Commission can do its work more efficiently and more effectively. And on that point, I'd like to acknowledge and thank our very hard working team Terry Turpin and others who are here, who are

leading the way. And I especially want to thank Tim and his colleagues around the table for their work in preparing for this workshop. And I'm looking forward to hearing from the experts who will appear here today as long as I am able.

I look forward to hearing about the lessons learned from your experiences and our collective experiences thus far and what we can do to make this a smooth process going forward. Thank you for your time.

MR. FURDYNA: Thank you, Commissioner. We're fortunate to have a number of representatives from a cross-section of stakeholder groups here today that have agreed to sit on our panel and help stimulate discussion. I'd like to start off by introducing several members of FERC's senior staff, Vince Yearick, director of the Office of Energy Projects, Division of Hydropower Licensing; John Katz, associate general counsel, Office of the General Counsel, Energy Projects Division; Terry Turpin, director of the Office of Energy Projects, and is Sarah Salazar, environmental biologist in Office of the Energy Projects, Division of Hydropower Licensing and project coordinator for the pilot two year licensing process workshop and Congressional report.

Next, we'll have the FERC staff here at the table introduce themselves. We can begin again with me. We've already met. My name is Tim Furdyna.

MR. HANSEN: Hi, I'm Ryan Hansen. I'm with the Division of Hydropower Licensing.

MS. MCNAMARA: And I'm Rachel McNamara, also with the Division of Hydropower Licensing.

MR. FURDYNA: Thank you for being here today. Again, we'll have the panelists introduce themselves shortly. Before we begin the panel sessions first, I'd like to do a quick phone check. Operator Dustin, can the callers hear us?

MR. HAHN: Yes, they can.

MR. FURDYNA: All right, great. Next, I'd like to go over some of the ground rules for our workshop today. Again, please make sure to turn off all of your cell phones. For the benefit of our court reporter that is recording today's proceeding, as well as those listening on the phone and the webcast, please make sure to use a microphone when speaking. For those of you in the audience, please use the microphone located at the front of the room when speaking and state your name and affiliation when doing so.

For those of us at the table, please make sure to turn your microphone on when speaking and off when you're not, to reduce any background noise. Since those of us at the table have name tags, there's no need to state your name and affiliation prior to speaking.

On that point, if you hear a knock on the glass

in the back of a room, that means our audio-visual personnel can't hear you. So again, please make sure your microphone is on before speaking.

For those of you on the phone, we will solicit comments from you at specific periods within the discussion. If you have a question or comment, please let the operator know so that they can cue you up when the appropriate time comes.

Finally, I'd like to remind everyone that we are here today to have discussions on the effectiveness of a tested two year pilot licensing process and programmatic level discussions on the feasibility of a two year licensing process. So while we can discuss the effectiveness of licensing processes for completed projects, please avoid discussing the merits of pending cases.

As a primer for our discussion, here's a brief overview of the Hydropower Regulatory Efficiency Act of 2013 and more specifically what Section 6 of the Act requires. Congress enacted the Act on August 9th, 2013. Among other sections of the Act, Section 6 requires the Commission to investigate the feasibility of a two year licensing process for hydropower development and nonpower dams and closed loop pump storage projects.

As specified by the Act, this two year period would include the time to complete any prefiling and post

filing requirements. The Act specifically required Commission staff to conduct an initial workshop to solicit input on how best to implement a two year process, which was held on October 22nd, 2013. We were to develop and implement pilot projects to test the two year process.

A pilot two year licensing process was tested for the Kentucky River lock and dam number 11 project between May 5th, 2014 and May 5th, 2016.

Further, we are to conduct today's final workshop to solicit input on the effectiveness of each tested two year process and finally, submit a report to Congress that describes the outcomes of the pilot project, comments received from the public, new policies and regulations necessary for a two year process, or if a two year process is found not to be practicable, the process, legal, environmental, economic, and other issues that justify such a determination. This report is due to Congress by May 29th, 2017.

MS. MCNAMARA: Good afternoon. I am Rachel McNamara and I'm an outdoor recreation planner in the Division of Hydropower Licensing, South Branch.

I worked as a specialist for recreation and cultural resources on the Kentucky River lock and dam 11 project. And this afternoon, I'll be moderating our first panel. With this panel, we hope to set the stage for

discussions that will occur throughout the rest of the afternoon about the outcomes of the pilot two year process and recommendations for the future of expedited license processing for original projects.

As you may know, in response to our request for projects to test the two year pilot, we received a proposal from Free Flow Power, now Rye Development to license an original project at the existing Kentucky River lock and dam number 11 in Estill and Madison Counties, Kentucky.

The project proposal was for a run of river facility using the existing dam and reservoir with a new power house constructed in the existing lock structure. The two generating units were proposed to have a total installed capacity of 5 megawatts. The project was licensed May 5th, 2016. We have with us several participants in the Kentucky lock and dam 11 project licensing process, who will be able to share with you some of their first hand experiences with the project. I'll give each of our panelists a chance to introduce themselves, beginning with Ramya Swaminathan.

MS. SWAMINATHAN: Thank you. I'm Ramya Swaminathan. I'm the CEO of Rye Development. As Rachel mentioned, we were the applicant for the project proposed to be located on Kentucky lock and dam 11. We're also a developer of other projects and have a number of other proposed projects in our portfolio. Thank you.

MR. HAMILTON: I'm David Hamilton. I'm a civil engineer with the Kentucky River Authority. And our agency is the owner in this case of the structure on behalf of the Commonwealth of Kentucky. We're a fairly small agency. We're operated by a 12 member board, the agency itself owns and operates 14 locks and dams on the Kentucky River and one of them happened to be lock and dam number 11.

MS. HAYES: Hello, I'm Stephanie Hayes. I'm the supervisor for the 401 water quality certification section out of the Kentucky Division of Water for the Department of Environmental Protection. My group is part of the permitting process for these Federal Energy Regulatory Commission projects. And basically, we kind of are part of the environmental oversight for that within the state of Kentucky. Any project within the waters of the Commonwealth has to get a 401 certification. So we have the oversight for that particular part.

MS. ALLISON: Hi, I'm Carrie Allison with the Fish and Wildlife Service in the Kentucky Field Office. I've been with Service about 10 years. I am primarily a consultation biologist. Had worked on hydropower off and on for about five years and came onto this project. It was probably about six to seven months in the process when it got handed over to me, so.

MS. RYALL: I'm Jennifer Ryall. I'm the

environmental review coordinator at the Kentucky Heritage Counsel, which is the state's historic preservation office. And my job there is reviewing projects, undertakings, effects on eligible or listed historic resources under Section 106 of the National Historic Preservation Act.

MS. MCNAMARA: Thank you, panelists. The first question I'd like to direct to Ramya, since it involves Rye's decisions in selecting a project to use the two year pilot process. Ramya, we know that at the time Free Flow and now Rye had a number of preliminary permits or projects on the Kentucky River and in other locations. What made lock and dam 11 a good candidate for the two year process?

MS. SWAMINATHAN: So as you mentioned, we had a number of other permits that we were evaluating at the time on the Kentucky River. And we had a number of permits and other projects in various stages of development in other parts of the country as well.

There were a number of criteria that were listed in the original pilot process solicitation. So the process that we undertook to select a project for the two year process really was answerable to two different sets of criteria. One, our internal feasibility criteria. We look at projects, a variety of technical factors that assess the project's economic feasibility as we are responsible to our investors ultimately to make sure that the projects that we

select and proceed on make a return for them. There are environmental factors to consider, as well as general market factors, which feeds into the economic feasibility criteria.

Separately, there were also the criteria that were contained in the original pilot solicitation. And many of our projects actually fit a number of those criteria. The one that stood out to us as a potentially difficult one to satisfy was the requirement for a feasibility determination from the dam owner.

And so when you put these variety of criteria together in the projects that we were looking at in our portfolio, Kentucky 11, lock and dam 11 really stood out as the proposed candidate for this process.

MS. MCNAMARA: Thank you. For David, since your agency is the dam owner or the state of Kentucky with your agency overseeing the lock and dam, do you have anything that you'd like to add regarding your interactions with Rye or the factors that contributed to or may have hindered the successful licensing of the project within a two year time frame?

MR. HAMILTON: I would say the two years was definitely I felt doable on our behalf as far as what we had to do. We had some discussions with Rye prior to them, I think, submitting it for a two year project. So there was

some early on conversations with us, because I think they were making sure they could clear that hurdle. That's kind of a big thing. So having a willing owner, I think, is a big part of it as far as being able to get through the two year process.

MS. MCNAMARA: Thank you. For the other panelists, do you have additional thoughts on whether there were project designs, site selection, environmental, regulatory, or economic factors that facilitated or hindered the pilot process, Stephanie?

MS. HAYES: Yeah, I think the biggest one for the state of Kentucky with a 401 process within our regulations, it states that for an individual certification, which is what all of our FERC projects become, we have to give public notice for 30 days what we call a complete application.

In this case, we could not have a complete application. This was very much in the essentially concept phase. So we couldn't do what was our normal 401 process and our normal certification. So we ended up kind of having to think very much outside of the box to still stay true to our regulations within the state, but get FERC and Rye the materials and the certification that we're calling the interim, which I'll talk more about later, that could satisfy those requirements, but stay true to our legal authorities.

MS. MCNAMARA: Thank you. Carrie?

MS. ALLISON: So yeah, site selection on this project was a big one for us. You know, we kind of look at the overall environmental impact of a project, but we also look at and actually my job as consultation biologist is whether there are federal listed species within the project's footprint.

For a hydropower project, typically, if you've got federally listed aquatic species, those impacts are really hard to avoid and it takes some time to work through that process. This project did not have any federally listed aquatics species within the footprint. It had the potential for some plants and potential for bats, but land impacts are a lot easier for us to address for this type of project than aquatics. Their not having the aquatic impacts on species was a lot easier for us to work through. So it facilitated a lot quicker.

MS. MCNAMARA: Thank you. And Jennifer?

MS. RYALL: I would echo some of the concerns from a second ago as far as reviewing under Section 106. Since there's portions of the project's design that won't be known for a while under I guess the HPMP, that's sort of what resolves that for right now, but it does push some aspects of the project review kind of down the road a little bit, so some of, I guess, the discussion was talking about

design that might not happen for like five years down the road or something like that.

So our concern, I guess, just kind of red flag would be that that might push also down the road need for additional cultural, historic, or archeological survey if there might be elements that we don't know about right now that could have an adverse effect on eligible or listed resources.

MS. MCNAMARA: Great, thank you. We will open the -- this question up to the audience. If you have any related comments or questions, if they're not specific to the question that you see appearing on the Powerpoint right now, we will have a time for more general questions later. So are there any comments from the audience or questions from the audience about this topic? Okay. Please remember just to turn the microphone on over there. State your name and then the court reporter would also appreciate the spelling of your name.

MS. WASSERMAN: My name is Carol Wasserman, W-a-s-s-e-r-m-a-n. I'm the policy director for New England Hydropower. My question is either to Rye development or to the State of Kentucky. Who owns and holds the act of the property rights to the project and how were those acquired?

MS. MCNAMARA: Turn on your microphone, ma'am.

UNIDENTIFIED SPEAKER: Yeah.

MS. WASSERMAN: Are you telling me you didn't hear me?

MS. MCNAMARA: I will restate the question. So the question was to Rye and to the Kentucky River Authority.

MS. WASSERMAN: And how were the property rights necessary to secure the license acquired? Who is the holder and how did those property rights transfer to satisfy the Commission's requirements?

MS. MCNAMARA: Thank you. Ramya, do you want to start with that question?

MS. SWAMINATHAN: Yes. So the Kentucky River Authority is the owner of the dam. And as David mentioned, we approached them early on before applying for the pilot process to make sure, as he mentioned during his earlier comments, that there was a willingness on their part to work with us as we went through the process and there certainly was. So we're very appreciative of that flexibility on their part. But in terms of property rights, we expect to work out a lease with them.

MS. MCNAMARA: David, did you have anything to add?

MS. HAMILTON: Yeah. So we've got -- this is kind of a new territory for us. It's not something that we've done a whole lot of. Of the 14 structures, there was -- there's one existing hydro that was built in the late

1920s. We did go through a change of ownership at that plant. That's at lock and dam number 7. So at that point, that was back in early 2000s, 2004 or '05, '06 range. So at that time, we did develop some standard lease agreement language.

And currently, we're dealing with two other locations. They're not in the two year pilot program at locks 12 and 14, where we'll be treating them the same way. So it'll be handled through a lease agreement. There won't be the actual property will stay the property of the Commonwealth as far as lock and dam goes.

The power plant will be the -- will be owned by the -- be owned by Rye in this case. And it'll be operated on our facility through a lease agreement.

MS. MCNAMARA: Thank you. Now any other questions from the audience? I see none. Dustin, are there any questions from the phone?

MR. HAHN: No questions at this time.

MS. MCNAMARA: Okay, thank you. So our next question I'm going to direct to you our agency representatives. So Carrie, Stephanie, and Jennifer. Thinking about the requirements for consulting under the Endangered Species Act, under Section 401 of the Clean Water Act, or under Section 106 of the National Historic Preservation Act, were there any modifications made to

your agency's standard practices to accommodate the pilot process schedule? Carrie, I'd like to start with you.

MS. ALLISON: Sure, okay, so not really. We did have one very small issue, but I don't think it was unique to the pilot process. I think it's actually -- it was an access issue. So one of the easiest ways to determine whether or not a project is going to impact a listed species is to do a presence absence survey. We had the potential not known habitat, but the potential for key plant species to be within the land footprint of this project.

And so, you know, like I said, one of our first recommendations was to go out and just survey the site to see if the plant is present. And then if it's not, then we get to move forward.

And what we found is that Rye only had access to portions of the project. And they couldn't get access to the full area until they had their license, but they couldn't get their license until all of their endangered species stuff had been taken care of. So we ended up, they did a great job. They surveyed the areas that they could. And based on that best available information, it really didn't seem like it was probable that the species, the two plant species would be there.

But we also kind of did a conditional concurrence, which is something we don't do very often in

that we made it not likely to adversely affect determination, based on the habitat information we had, but also in Rye agreeing to go back to the places that they couldn't access before. Survey the site for plants before construction started. And then if they came across any of those plants, then they would coordinate with us additionally.

You know, with plants, you can do that. You know, Rye had some comfort level. And we can move. We can, you know, there were some things that they could do. So typically, we like to see the entire site surveyed before we do that concurrence, but in this case, because we had preliminary habitat information, and we had the agreement to go in before construction started, we were comfortable with making that determination.

MS. MCNAMARA: Thank you. Stephanie, why don't you talk about your agency's Section 401 process?

MS. HAYES: Sure. So normally, the FERC projects are some of our largest and longest running projects to get a certification. Typically, what we do, we have quite a few preapplication meetings, which we also did with Rye as well. There's significant environmental data that is normally collected as far as endangered species, mussel surveys being a large one in our area, DO levels for typically a quite substantial amount of time before any application is

submitted.

We also typically have a full application package, like I said before, with all the engineering components of final plans, final timelines, and schedules.

In this particular case, like I said before, that was not feasible. So we did in this case, unlike Carrie, we actually changed ours significantly. And what we ended up having to do is what I had called an interim certification, which essentially what we did was we met with Rye quite a few times and outlined with them essentially every possible condition that they could end up with, with different scenarios depending on -- we had the general idea of what they wanted to do, but depending on variations of what could happen on schedules, things of that sort, we basically conditioned -- it's probably one of our longest certifications because we threw in every condition we could think of to make sure we were covering our bases.

But essentially, what it comes down to is there is a clarification in there saying that it is not a final water quality certification. If any of those conditions are not met or not agreed upon, that we can revoke that at that time and that no construction can commence until that final certification is in hand with Rye Development.

So with that broken down, it is the first of its kind. We've never done anything like that. And like I had

said, we had to figure out a way to get Rye and FERC what they needed without compromising or regulations. And so, doing this, where it's not a true certification, but it outlines exactly what is expected of Rye was able -- allowed us to be able to get that process moving without any complications. Now we still haven't seen that to fruition, because obviously they'll have to -- we have to see how this will work when we do change that from interim to a final.

But I think the way that we did it, we really covered our bases. So it's probably just going to be modifications to that to the final actual certification. But in that case, we will public notice it for the normal 30 days and then issue Rye at that time their final certification for that project.

MS. MCNAMARA: Okay, thank you. And last, Jennifer did you have any additional thoughts about Section 106?

MS. RYALL: I would say just the main change for us was in quicker turnaround times on our responses than a lot of times we're able to get back to people. We have a very small agency that's stretched very thin right now. So I just made sure Rachel reached out very, very early before I ever actually saw a Section 106 submission come in to explain the two year process to me so I understood it. I

knew what to look for. If I saw emails coming in or calls or submissions coming in, I went ahead and pulled those to help meet the two year deadline.

And as far as our response, we went much like Fish and Wildlife on the conditional response, which is very typical for us, actually. We do a lot of conditional responses.

In this case, it was conditional on various things. So if there are any changes to the area of potential effect, we didn't know certain design elements about the lock and dam, about the transmission lines and other things. So our response was conditional in that sense. We did concur with an adverse effect based on what we knew about what was happening to lock and dam 11, but there's a lot of things kind of still left out there that will need review.

MS. MCNAMARA: Thank you. David, I wanted to give you a chance, if you had any additional thoughts?

MR. HAMILTON: To be honest, we don't have really have a whole lot of standing processes, because it's so -- such a new thing to us. So I can't really say as to how much we change just because it's something new.

But I would mention, too, that you -- there are -- this -- there is some upside to a shorter process. Like I said before, we're governed by a 12 member board. And

when you start getting into stuff that's stretching out six, seven years, half to three^^quarters of our board has changed at that point, so we have to go back to a whole new board and explain where we are in the process. So having a shorter time window kind of helps us in that regard.

MS. MCNAMARA: Thank you. And Ramya, did you have any responses that you wanted to add?

MS. SWAMINATHAN: Yeah, I wanted to add two things. One is, you know, we were very appreciative of all the resource agencies up here and other stakeholders who, you know, communicated with us frequently. And in cases where it was, you know, kind of standard business for them certainly, we all work together. But in cases where it wasn't, we were able to come to the table and, you know, figure out a solution that worked for the process.

The one thing I will say is that it's not unusual for us to run into states that are used to seeing with a 401 application final design, which in the context of the typical FERC licensing process really doesn't -- it hasn't been something that we've been able to provide this early in the process. And so, we appreciate the state of Kentucky working with us on this. And we've had to do the same kind of creative solution in other states as well to satisfy the requirements of the FERC licensing.

The thing I'll say about process from our

standpoint, having been through a number of other licensing processes as well on other projects unrelated to the Kentucky lock and dam licensing process is we tend to think about processes, regulatory processes as what is something we can state as being attractive to private capital because ultimately, we're attracting private capital to invest in hydropower development.

And some of the processes around the pilot process that were absolutely terrific were sort of a clearer schedule for interim steps along the way, certainty and clarity on the number and the scope of studies, which were provided upfront in the process letter, and a target licensing date, even if it was not a commitment and contingent on a whole lot of other things. Those were really terrific for us.

MS. MCNAMARA: Thank you. I'd now like to open it the audience for any questions or comments regarding standard practices or processes. I see none. Dustin, are there any questions or comments from the phone?

MR. HAHN: There's no questions at this time.

MS. MCNAMARA: Okay, thank you. So for our panelists, and I think this is one that I will have everyone speak to, was sufficient information provided or developed during pre-filing? And I think some of you have already touched on this. So we're talking about information that

was provided in the preapplication document, supplemented by study reports, or included in the draft license application that allowed you to efficiently and timely fulfill your responsibilities. I can start with Jennifer.

MS. RYALL: I would say that information was incredibly helpful to have as far as the timelines. And I think it just kept everybody on the same page as far as working together to meet the two year time frame.

MS. MCNAMARA: Carrie?

MS. ALLISON: Yeah, this is probably the one thing that I would want to touch on the most, because you know, a lot of times when we're doing a hydro project, the applicant isn't in the state and then we're used to working with a federal agency that's also in the state. And you guys are in D.C. So this project, the amount of communication we have both from Sarah and from Rye was just unbelievably helpful.

So we would get information submitted to us on habitat assessments in like a, you know, an email or a phone call from Sarah letting me know this is where we are in the process. This is what this is and then a follow up from Rye. Did you get this. Is there, you know, and do you have any questions.

And so, to have that level of responsiveness, both from the action agency and from the applicant was huge

for us in being able to meet our timelines and making sure that, you know, we weren't letting anything slip through the cracks and being able -- because when we're brought in upfront, and we're brought in early, then there's a lot more options. There's a lot more flexibility, you know, with the amount of time that they're given. So I think having all of that information upfront was huge for us in getting this done in time.

MS. MCNAMARA: Stephanie?

MS. HAYES: Yeah, so I would say with our agency, we actually had significant turnover during this process. We've had three people on the project since it started. There was some confusion in the beginning, I think, because my staff had never seen anything like this. I don't think they were fully aware of the time constraints. And so, we did have some confusion for the first little bit.

However, once that was cleared up and clarified, I think I was on the phone with Dawn Leoson from Rye almost weekly the last couple months. And I know Chloe Brantly of my staff who drafted the interim was on the phone I believe with you Rachel, maybe not, someone from FERC. Someone from FERC pretty much daily while she was developing it to make sure that it was meeting what Rye needed, meeting what FERC needed.

So again, kind of just going off what Carrie

said, having a lot of communication as early on as possible and as frequently to make sure that everybody was clear on what was needed and what was being developed, so we weren't going back or wasting any time.

MS. MCNAMARA: Thank you. David?

MR. HAMILTON: So we had -- I think we had plenty of time as far as our role in the FERC licensing process. I would mention I guess where the rubber meets the road as far as we're concerned would be a lot of it has to do with post licensing.

We're looking primarily at two things as the dam owner in this situation. One, how it affects other constituents that use that water. In this case, we've got a fairly large city that uses that pool that's supplied by that dam. The lock itself has been closed. There's no recreational or commercial navigation that uses that lock.

So primarily we were interested in how the operation of the plant would affect water supplies specifically. And then secondly, as far as the construction goes structurally how it will impact the rest of the structural, the lock and the dam and the integrity of it going forward.

So a lot of that isn't really dealt with too much up front in the FERC process. A lot of that will be dealt with in the lease agreement with the language that's put in

there. In this case, it will probably go for a little longer review of the structural plans, just because it's a little more invasive than what were originally thinking as far as just going right in the lock chamber in this case or, you know, taking out one of the lock walls. But getting back to the time frame, as far as our role in the FERC process, we didn't have any issues with that.

MS. MCNAMARA: Thank you. And Ramya, you specifically, would you like to comment on any challenges that you faced in completing your studies in the time allotted or in collecting any of the agency requested or recommended information during pre-filing?

MS. SWAMINATHAN: Yeah, absolutely, I'd be happy to. I want to just start just by saying that I, you know, fully agree with the comments of my fellow panelists. I think there's a lot of communication that helped move things and meet deadlines. And part of what I said in my answer in my response to the earlier question I think speaks directly to that having a very clear process plan with clear target dates helped everybody galvanize around those dates so that we knew what we were communicating about for what date with what goal. And I think that is an incredibly helpful level setter in terms of expectations. Having clarity as I said also earlier on the number and the scope and the type of studies was also extremely helpful.

In terms of challenges, I think certainly, and you've heard from the stakeholders in this case about some of the challenges. You know, we were not at a final design stage. You know, so we had to with great flexibility on the part of the Commonwealth, you know, come up with a process that worked for the particular requirements we needed.

There was snow cover, which impeded some of the terrestrial studies that was unusual and late. And we turned in parts of certain studies with, you know, requests for extensions of time and a real appreciation for the flexibility of the resource agencies, but also FERC staff in reviewing parts of the studies that were available, but not the field work that was precluded by the snow cover.

And I think those were the primary challenges, but I think everybody was very willing to work through them.

MS. MCNAMARA: Thank you. Are there questions or comments from the audience about the prefiling consultation or study process? Yes? Please make sure the microphone is on and state and spell your name for the court reporter?

MR. LITTLE: Thank you. Is it on? My name is, excuse me, William Little, L-i-t-t-l-e. And with respect to the period of time and the conduct of studies, I wondered if there were -- they've been spoken about fairly generally. And I wonder if there were any particular individual studies that put more stress on meeting deadlines or perhaps were

more of a challenge to complete within your expected time frames. And I guess if not, what do you think might have been the winning points that allowed you to keep that within the envelopes of your deadlines?

MS. MCNAMARA: Ramya, I'll send that to you first.

MS. SWAMINATHAN: I was going to say I presume -- that's directed at me at least partially. So I think we've touched on some of the challenges specifically on the terrestrial studies and that was really some weather events that left significant snow cover on the ground very late. So it precluded some terrestrial surveys from being fully completed in terms of the challenge.

I think in terms of the other studies, they're actually from our experience licensing the Kentucky 11 project relative to the projects that we've done that were not in the pilot process, the studies that we did were fairly consistent. We've done the same suite of studies on the other projects as well, which are also new hydro projects and nonpowered dams, but they're in different jurisdictions in some cases with potentially different impacts depending on the design as well as the existing condition.

So I think, you know, we were able to leverage some of that experience. And we did not have trouble

meeting that schedule other than the specifics of what we've said before, which is there were some snow cover. Certainly, we're not in a position to provide final design, but other than that, we did not see any challenges.

MS. MCNAMARA: Ramya, would you mind just letting folks know which -- what type -- what studies you all did for this project, just I think that might be helpful if you remember?

MS. SWAMINATHAN: I couldn't guarantee that my memory would be terrifically accurate, but we certainly did a hydraulic study. We did cultural resource work. We did fish entrainment studies. We did terrestrial surveys, including or presence absence as Carrie referenced. And I'm sure there are others. And I can certainly follow up, but I don't remember offhand.

MS. MCNAMARA: That's fine, thank you. Carol, I see your question. Before we take your question, I'd like to -- okay. Okay. Why don't you go ahead and ask your question. I'm sorry I'm getting back to you.

MS. ALLISON: Actually, Rachel, before we -- can I add something to that response before?

MS. MCNAMARA: Yes.

MS. ALLISON: Because this is think where it gets back to that early coordination. So some our restrictions for presence absence surveys, they're entirely biological.

And there's nothing we can do about that. So if you need to do a plant survey, we can't do it in the middle of the winter, because the plants aren't there. And if you need to do a bat survey, we can't do it in the winter, because they're in their caves and they're not on the landscape.

So coming to us early so that we can let you all know what species could be present and then at what time frames you can do a presence absence survey, because they're nothing worse than, you know, in January, somebody wants to move forward, but we have unaddressed presence absence with plants. And you can't survey until March or April. And so it puts a lag on things. So coming to us early and not only getting the species list, but if you choose to do presence absence surveys, when those surveys can be done is key.

MS. MCNAMARA: Thank you. Other panelists, do any of you have any additions? No. Okay. Carol, go ahead.

MS. WASSERMAN: At the risk of monopolizing you all, I believe this is more appropriate to the FERC folks, the three areas that consume a tremendous amount of time and cost are listed species studies for exactly the reasons that were described. You might have more than one season, historic preservation, water quality certification with the state.

While I certainly appreciate the value of taking those three generally lengthy processes and effectively

pulling them post licensing instead of pre-licensing, investors would have a lot more reassurance. You've got the license in hand. And I understand what that does for up front capital.

The question I had for FERC is given that these were interim or conditional approvals, how would that translate into a regularized license process if this were not a pilot project. How would that be incorporated into a regularized process? Would the Commission continue to use interim conditional concurrences? I just don't understand how that works once you take it out of the laboratory as it were --

MS. MCNAMARA: Thank you, Carol. I am going to direct this question over towards John or Vince, if one of you would like to respond.

MR. YEARICK: This is Vince Yearick, director of Hydropower Licensing. I think the answer to that question is we're still trying to figure that out. Just -- the primary purpose of having the workshop and I think you will -- the best answer to that will be in our report to Congress.

So and there are certain things that we have to do in order to get through the licensing process. You know, we have to do consultation under ESA and we need a water quality certification. So, I mean, those are kind of

minimal bars. And then we have to do a reasonable analysis under NEPA.

Other than that, what we, you know, do or whether we can implement this on a programmatic scale, I think, remains to be seen.

MS. MCNAMARA: Thank you. Before I move on to the next question, I just want to make sure, are there any questions from the audience? Dustin, are there any questions from the phone?

MR. HAHN: No questions at this time.

MS. MCNAMARA: Thank you. Panel, before we move on to the next question, we'd like to recognize Chairman LaFleur, who's stepped in.

CHAIRMAN LAFLEUR: Well, thank you very much. I just wanted to say a couple things. I'm sorry that I missed the beginning of the session. I had a longstanding commitment to a DOE thing this morning. But I think it's -- this is an important day to try to learn the lessons that we can from our experience with the pilot process.

Congress doesn't touch the Federal Power Act very often. And in 2013 was the first time -- first thing they did since I had been on the Commission. I know the Senate Energy Committee did a lot of work to make this happen and our FERC's own Dan Adamson was one of the authors.

And it's important that we properly implement it

and try to achieve the purposes, which is really to foster more hydro development. We all know there's a tremendous number of dams that don't have hydropower that are not presently used for hydropower. And it's a high potential, carbon free, dispatchable, flexible, and reliable resource.

So hopefully, we can really dig in and learn the experience that the folks from Kentucky and Rye had with the pilot so that we can figure out a realistic process to expand it to a more reasonable number of projects while still living within the way the Congress gave us the law. So thank you all for being here. And I look forward to hearing what you have to say.

MS. MCNAMARA: Thank you, Chairman LaFleur. Okay. Panel, back to -- back to your questions. Just want to make sure I'm coordinated with my slides. For our agency staff, do you -- are there any limitations on your agency's ability to sustainably process expedited licenses for multiple projects? So we're thinking if we were doing more than one of these pilot type projects, how would that work for your agency? I'll start with Stephanie.

MS. HAYES: Sure. So this is kind of going back to the question that was just posed over whether or not an interim certification is going to be useable for FERC or worthwhile as far as time constraints being that they still have to get a final certification and still have to go

through all the same processes in order to get that.

However, if it was deemed, which is how I'm going to go with it, if it was deemed useable, because we covered all of our bases with Rye and with this interim certification at this time, I don't see why we couldn't apply those to other projects because we truly looked at this as an overarching general idea as far as covering everything we could possibly think of, not just for lock and dam 11, but for our normal hydro projects in general.

So I definitely see us doing modifications possibly to the process, depending on what this workshop concludes with, depending on what issues we see as we continue with Rye to get this project off the ground, but I just see those as modifications. If we decide the interim route is something that's feasible and something we want to continue doing, I don't see that it would be hard to implement on multiple projects.

MS. MCNAMARA: Thank you. Carrie?

MS. ALLISON: Sure. So it's difficult for me to speak on because we have different field offices in every state and and every field office has a different workload. For us individually, and I'm going to have to go ahead and admit, because I came into this project late, I actually wasn't aware that it was on a pilot program, fast track. I just thought that we had an unbelievably responsive

applicant and FERC coordinator I was like, wow this is great.

So and once I became aware, I was like, oh, makes a lot of sense now. This project from an ESA standpoint consultation was really straight forward for us. We were able to work with the applicant, put in some avoidance and minimization measures, and get to not to a likely to adversely effect.

However, if that weren't in the case, if we were to end up with a likely to adversely affect determination for the species, formal consultation is a pretty involved process. From start to finish, it can take a 135 days. So if we couldn't get to a “not likely to with avoidance and minimization measures, then I could see where some of these projects could be pretty cumbersome on a field office.” We wear a lot of different hats in the office. And so, maybe responding to the time frames would be a little more difficult for us.

But again, when you get back to the type of coordination that we had on this, I think, you know, early and frequent is the real key.

MS. MCNAMARA: Thank you. Jennifer?

MS. RYALL: For our office, like I said earlier, we're tiny. We're stretched pretty thin. And so, our office is structured that we have three Kentucky transportation cabinet liaisons. We get a lot of Kentucky

transportation projects. And that's -- can be pretty common for other SHPOS across the state or across the nation, I'm sorry.

So I'm not sure about our ability. We sort of talked about this before I came here. I'm not sure about our ability to handle a number of these where we're prioritizing everything. Obviously, we have other agencies that have fast track projects as well.

So I think that would stretch us pretty thin. I don't know if there's other states that might have something like a FERC liaison. That's something that we talked about as a possibility if we had someone that was dedicated to this other FERC project that we see that might become a possiblity that we could handle a little bit better, but I realize it's a long shot. But I do think that it would be tough for us right now to take on a number of these types of projects.

MS. MCNAMARA: And David, since you have seen now a few FERC license projects on the Kentucky River, do you have any thoughts?

MR. HAMILTON: Yeah, I don't think we'd have issues doing multiple projects. In a sense, we've kind of been doing it. Two of them aren't on the fast track, but we're kind of dealing with three current licensing projects right now. But I -- as a rule of the owner of this process,

I don't see any issues going forward with that multiple two year programs.

MS. MCNAMARA: And Ramya, do you have any thoughts on the challenges or limitations that fast tracking projects would have for you or I guess, you know, benefits to you? If you would like to speak to that.

MS. SWAMINATHAN: I think from our standpoint, the two year process really is a benefit and a virtue towards planning and certainty. We say all the time from an investor's point of view, that a process, the best kind of process would be short and certain. A long and certain process is all right. It's tolerable, but a long and uncertain process is not financeable.

And so from our perspective, having the process be clear, transparent, sent out ahead of time with dates, even when we had to work very hard to meet those dates meant that we could do our planning in order to make sure that we did whatever we needed both from a field work perspective, from an information needs perspective, from making sure that everybody who needed to know did know what they needed to know. So from our perspective, it was really a virtue.

MS. MCNAMARA: Thank you. Are there any questions from the audience regarding the agency's limitations on pursuing or processing or I guess the applicant's pursuing the process or the agency's processing

applications in a shortened time frame? Seeing none, Dustin are there any questions or comments from the phone?

MR. HAHN: No questions at this time.

MS. MCNAMARA: Thank you. So this is the last question that I'm going to direct to every member of the panel. Ramya, I'll start with you and work around. For the first part of the question, how should the Commission measure the effectiveness of this two year process?

MS. SWAMINATHAN: Well, I think the shortest answer to that question was that it was done successfully. And that seems to me to be very effective measure.

MS. MCNAMARA: David?

MR. HAMILTON: No real good ideas yet. And kind of like what you're doing today, just getting feedback from all entities involved.

MS. MCNAMARA: Stephanie?

MS. HAYES: I would say now, yes, it was effective considering that we did get it done. I would say on our end, though, it was a very close call. But I think now, because of the communication the first time around and what we got from this workshop, depending on what the outcome is, I think we could do it much more effectively next time. So I would say it was effective, but could be improved upon next go around.

MS. MCNAMARA: And Carrie?

MS. ALLISON: Yeah, I agree with what Stephanie said. One of the things for us that was great about the two year process is that species surveys have -- they have a lifetime to them. And so, a lot of times when we're going to through the regular process, you'll have done a species survey and then three years rolls around and we're like we're going to have to do it again because the survey had expired.

So when we fit everything into that two year process, and even though Rye had to deal with, I think we had a species that was a candidate that went from listed. And then we had the northern long ear bat that was listed during their process. So even in that short two year window, they still had -- because biology constantly changes.

But when you're getting all of the information in two years, for us, I just felt like we were able to use the best science available, which is always our key. And then really put effective avoidance and minimization measures in place because we had all of the up to date information in one place. So for us, I felt like it was a real success.

MS. MCNAMARA: And Jennifer?

MS. RYALL: I feel like I guess as far as effectiveness, then there's two kind of it's like effective for FERC or effective for all of us. So for me, the

effectiveness I guess is a satisfactory outcome of the project. I think that those two things are so closely tied together. And we're not fully there yet. So I'm kind of reluctant to comment on effectiveness until we actually reach the end of like the Section 106 process. But it seems like for you all, that you know, meeting the two year goal was very effective, so.

MS. MCNAMARA: Do any of the panelists have any additional thoughts on this? Okay, Stephanie?

MS. HAYES: Yeah, I just kind of want to go off that as well. Basically, as far as two years, yes, it was effective, because we hit it. But again, because ours is an interim, I don't want to say yet that yeah, go forth with all of them because I don't know yet how that's going to look, but I think that's kind of in general what we've seen any way. Just we won't know the final out come until Rye is able to get in the ground.

MS. MCNAMARA: Okay. Thank you. Any other thoughts? We will have a more general comment period in just a few moments. Audience members, are there any questions regarding this? Just a reminder, please turn the microphone on and state and spell your name.

MR. BROWN KINLOCH: Yes, my name is David Brown Kinloch. Last name is Brown like the color and then Kinloch, K-i-n-l-o-c-h. As far as measuring the

effectiveness, I think you have the perfect project here. Because you can measure it against a conventionally licensed project.

Mr. Hamilton has mentioned a couple other projects. We just finished licensing lock and dam 12 and lock and dam 14 on the Kentucky River, which are just upstream from lock and dam 11. So you have a perfect apples to apples comparison of the two licensing processes. This is a two year process. From the time that we apply for a preliminary permit, to the time we got our license was seven and a half years. So you have a very good comparison there.

I have to second a lot of the things that were said here. I can tell you that what Mr. Hamilton said, I made three different presentations to the board of the Kentucky River Authority, because the board keeps changing during that seven and a half years.

I started working with the Kentucky Heritage counsel with one person. Then I went to Jill Howell. And she left. There was another woman that came in. And now Jennifer is there.

I worked with someone before Carrie. Carrie took on the project. Another person came in. I worked with him for a number of years. The day that we got final approval from them is the very day he left and Carrie

took back over. Okay. We don't have them here.

There are five agencies in Kentucky that are active in this. You've got four up in here. The other one is Kentucky Fish and Wildlife. Same thing with that, we have been through three different people. I know just in the last month, we changed. And we've got a fourth person now at Kentucky Fish and Wildlife. Every time there are changes, I have to go and start from scratch with people that haven't heard of our projects, reeducate them. And it takes a long time on the exact same project.

So a two-year process would be a blessing especially, especially a place like Kentucky where one, you have agencies that are overworked. I mean, my biggest problem in licensing in Kentucky is getting a meeting with the agencies because these folks are so overworked.

Stephanie's person under her, Joyce Brock , I work with all the time. She says I don't have time to meet with you. My recent meeting with her, I don't have time to meet with you. I'm dealing with mountain top removal. I'm dealing with over burden put into blue line streams. I have coal ash ponds collapsing. I have acid drainage from coal mines. And what you're doing putting hydro on an existing dam, run-of-river is minor compared to what I do.

So my biggest problem is even getting the agencies to be able to get to a meeting, not because they don't

want to come. So because they're so overworked.

So I think the perfect comparison, you're -- whether you can see if this is an effective process or not is compare what was done as lock 11 by Rye to what we went through at lock and dam 12 and lock and dam 14 and the seven and a half years we went through on projects, which we provided in our license application in 2012 a memorandum of agreement from the agencies saying that they were in complete agreement on each of the issues that was laid out and how everything should be in a license. And it still took from 2012 to the end of 2015 to get the license. So there you have it.

MS. MCNAMARA: Is there anyone who wants to provide any response or additional questions? Yeah, please state your name and affiliation and spell it for the court reporter, your name?

MR. JANKEL: Hello. My name is Paul Jankel. I'm from England, expressly Scotland. Company's Aquanovis. If you're going to compare sites within the country, you should also look abroad. We had a very, very intense industry in Scotland. We had two people to deal with. Scottish Environmental Protection Agency, water, and then Scottish National Heritage. Everything else, 12 months.

And to the point Ramya is making, look at India. All of the money that we're trying to bring here, people

want to take to India or Brazil. Why? The time. That's what I have to say.

MS. MCNAMARA: Thank you. Stephanie would you like to speak.

MS. HAYES: I did just kind want to go off the first comment made. Kentucky currently right now just had myself and Joyce for about six months, where we normally have a staff of seven. So hopefully, that'll get a little bit better. But going off of that, though, I do think that's a valid concern because we have been seeing a lot of turnover within the state agencies being cut smaller, I know SHPOS had issues with that.

And on top of that, too, a younger staffing. People have a little bit higher -- it's a bigger learning curve. They're coming in with maybe not less knowledge, but just maybe not directly, you know, associated. Most of my staff, when they come in, have never done anything with an FERC project. So they are hitting the ground running with these. And so, I definitely see, yes, when we come in, I was the same way. When we come in, they're having to start with scratch from us. Not just with the project, but possibly with FERC as an idea. So having a quicker process can help with that aspect.

MS. MCNAMARA: Thank you. Go ahead since it sounds like we're moving into the kind of more general

questions and comments. If you have questions and comments for this panel, now would be the -- now would be an appropriate time to ask them. We are having the second panel, which will be discussing the national implications of the two year process. But if you'd like to direct any questions to our panelists now, now is a good time to do that. Okay.

MR. YEARICK: Okay, it's still on. Vince Yearick again from Hydropower Licensing. The state mentioned a couple times that the water quality certification is interim. I'm curious regarding -- I'm curious about what you need to get to what you would call a more final water quality certification and if there are any other I think it was mentioned about Section 106 that were not quite done there. So I'm curious as to how close we are to start of construction for this project? What needs to happen to get to the final water quality cert, what needs to get done for, you know, whatever is left under the HPMP.

MS. MCNAMARA: Okay, so I guess I will start with Stephanie and then go to Jennifer and then Ramya. If you want to give any updates on the status of the project, that'd be helpful.

MS. HAYES.: Okay. So I'm not 100 percent on the environmental studies. I'm not sure if we're at all of the environmental studies needed. I think there's a little bit

left to go as far as background data.

But the biggest thing is what I talked about before. And this would vary by state because this is our state regulations is we cannot public notice a project until we have all of the specifics. Now that's not saying that if something happens during building, that's really common. We do modifications to certifications all the time, but we cannot by law within the state of Kentucky public notice a project without the complete construction plans, the complete construction schedule. All of those factors, site visits and such, which I believe we've done a site visit, but it would be a site visit pretty soon prior to the actual construction.

And then with that being said, you know, we do not have a general. There's general certifications of individual certifications. We do not have a general for FERC projects. So everyone has to go the individual and the public notice route.

So this could be different with other states. Maybe not, you know, in other states maybe that's something they could work around, but with Kentucky, because that's on the books, we can't ever give a final until we have the absolutely done plans for the project.

MS. MCNAMARA: Okay. Jennifer, if you want to just speak about what's remaining with Section 106?

MS. ALLISON: Yeah, I can weigh in. Our conditional's a little bit unconditional. We're always kind of conditional. So because we always have that re-initiation clause in ours that if the project ever changes and affects the species in a way that wasn't previously considered, then we ask to re-initiate consultation. So that's in every single project that we do.

With this one, I guess calling it a conditional concurrence isn't really correct because even though that's what I called it, because we had data that made us comfortable with the not likely. And their agreement to go in to survey before construction really was just another added avoidance or minimization measure.

So we've concurred with the not likely for all of the listed species on this. And we just felt like the going back in to survey before just in case would give us just a little bit more comfort with that determination.

MS. MCNAMARA: Thank you.

MS RYALL: For the Kentucky Heritage Council under Section 106, so we didn't have the final design for what's being proposed for the dam itself. The dam is eligible under the National Register of Historic Places. We also didn't know what the final route of the transmission lines was going to be. So under Section 106, we're required to identify eligible or listed historic resources. That's basically the first step.

If we don't know where transmission lines are going to go and things like that, we can't very well identify what's even there. So that it is the starting point of our process. And then the next step would be assessing whether there are adverse effects. There can be all kinds of various adverse effects to those things, eligible or listed.

So we didn't have enough information to give a full concurrence at that point. So those are kinds of the things that we're waiting for. Like we literally can't review those things until we know what's actually happening.

There was something else I was going to say, too. I guess just kind of going off what you said about, you know, being a small agency and things like that, you know, it's -- it can be tough for us to find time, but we will always try to. If we know things like this are happening, that's where the great outreach that Rachel did early on, if we know these things are happening and that there's tight deadlines, it really, really helps us to know about those, so.

MS. MCNAMARA: And Ramya., did you want to add anything?

MS. SWAMINATHAN: Sure. I think in response to Vince's question as sort of what's the timeline to getting the project in the ground, as a developer, you're really --

you have a bunch of horses. And you line them all up and you hope they get to the finish line at the same time, right? So licensing is one of them. And all the various conditions that we need to meet across all our permitting regimes, including construction permits, et cetera. We need to negotiate a lease instrument. We need to finalize off take arrangements. We need to advance our final engineering design and construction contracting. We need to line up project financing. So we're hard at work on all of them.

MS. MCNAMARA: Are there other questions or comments from the audience? I see none. Dustin, are there any questions or comments from the phone?

MR. HAHN: No questions at this time.

MS. MCNAMARA: Thank you. So I want to thank you all of our panelists for their time and efforts involved in licensing this project. Now as a reminder to everyone here, if you have questions or comments that you were not able to provide about the pilot project, or if you need to depart before our second panel, written comments may be filed through April 14th, 2017. Guidance on how to file written comments is provided in the Commission's January 30th notice of the workshop.

We've now scheduled a break. And I know that our break was set for 15 minutes, but I believe our panelists

for the second workshop, one of our panelists will not arrive until 2:30. So I think at this time, we'll just take a break until 2:30 to allow our panelists to arrive. So you'll be able to get lunch instead of just running to the bathroom. So we hope to see you all back. And at this time, I'm going to turn off our mikes and let you all take a break.

(Break)

MR. HANSEN: All right, we're going to start the second panel now. Let me reintroduce myself. My name is Ryan Hansen. I'm a fisheries biologist in the northwest branch of the division of Hydropower Licensing. I'm also a member of the small hydropower team here as FERC. And I worked on the licensing of the Kentucky River lock and dam 11 project.

Before we start, I want to again remind everyone to please turn off your cell phones because if they're on, they can cause interference with our audio equipment. So please remember to do that.

And I'd also to reiterate what Tim said prior to the first panel that today, we're only talking about the effectiveness of our tested two year pilot licensing process, as well as programmatic level discussions on the feasibility of this.

So while we can discuss the effectiveness of the

process for completed projects, please avoid from discussing any pending cases or the merits of them. Thank you.

So we're going to shift focus a little bit now. And we're going to discuss the practicability of implementing a two year process on a programmatic scale.

First off, I want to thank you all of the panelists for their time. They've been very generous. And I'd like to thank you them in advance for their careful consideration of the questions that we're going to be discussing this afternoon.

We'll start by allowing to them to introduce themselves. So we're going to start with Mrs. Wasserman. And then we'll go around the table in a clockwise fashion. Let them introduce themselves to you.

MR. BORGQUIST: I am Carl Borgquist, president and CEO of Absaroka Energy. And just for reference, we are the project developers of the Gordon Butte closed loop pump storage project in Montana.

MS. KOERNER: My name is Mona Koerner. I'm with the United States Forest Service. I'm the program manager in the Washington office for hydropower for the national forest system.

There's over 200 licensed FERC projects on national forest land. There's over 30 exempted projects on national forest land. And there's a number of pending

preliminary permits. Forest service land tends to attract hydropower because it's got topography and water. About 80 percent of the United States drinking water originates on national forest land.

MS. KLEIN: Good afternoon, everyone, I'm Amy Klein. I'm the U.S. Army Corps of Engineers headquarters regulatory program manager. I'm the energy point of contact for regulatory. So my work is focused on Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

If you have any questions on Section 408 permitting, I know Kyle Jones is here in the audience. So I will direct all questions regarding to that to him so he can answer. And for those of you, since I know there's a hydropower community folks here, Kamau Sadiki the Corps' hydropower program is retiring at the end of April just so you're aware of that. If you need to reach out to him sooner rather than later, it is probably recommended. So looking forward to talking to you all today. Thank you.

MR. LITTLE: Good afternoon and thanks very much and to the Commission as well. My name is Bill Little. I'm an attorney in the office of general counsel at the Department of Environmental Conservation in Albany, New York. And we are the water quality certificate certifying agency for New York state. And I work with a staff of

attorneys and qualified regulatory experts in fish and wildlife, water, and other disciplines who will work with applicants in the forthcoming what we call tsunami of re-licensing applications that New York state faces. And actually, we're looking forward to it. And this discussion here may just fit it in as a very timely factor. Thank you.

MR. O'KEEFE: So I'm Thomas O'Keefe. I'm the Northwest Stewardship Director for American Whitewater. And the same high gradient rivers that attract hydropower development, attract white water paddlers.

I serve as the chair of the hydropower reform coalition nationally, which is a diverse consortium of 160 organizations around the country. And we have an interest in restoring rivers impacted by hydropower dams. And personally, I've been involved in hydropower licensing for about 20 years and have been personally engaged in several dozen hydropower licensings throughout the country. Thanks.

MR. HANSEN: Thank you very much. So we'll move on to the first question. The first question posed to the panel has to do with the criteria for projects and FERC solicited possible projects to go through this process. And I realize that at no place did we list these for the audience. So I'm going to -- if you don't mind real fast, just read the criteria that we were required for a project to be considered for a pilot project.

"The project must cause little to no change to existing surface and groundwater flows and uses. The project must be unlikely to adversely affect." Federally listed threatened and endangered species.

If the project is proposed to be located at or use a federal dam, the request to use the two year process must include a letter from the dam owner that the applicant's plan of development is conceptually feasible, if the project would use any public park, recreation area, or wildlife refuge established under state or local law, request -- excuse me, the request to use the two year process must include a letter from the managing entity, indicating its approval of the sites used for hydropower development.

And finally, for a closed loop pump storage project, the project must not be continuously connected to a naturally flowing water feature.

So now that we revisited those, and they're fresh in your mind, I want to talk about those criteria. So were the criteria in FERC's notice soliciting pilot projects reasonable and practicable? Let's start. I'd like to direct this to Mr. Borgquist first.

MR. BORGQUIST: I think the conditions were reasonable. As you may know, we were asked to consider being the pump storage close loop pilot. We declined

respectfully to do that for the following reasons. We directed not at FERC or staff. We did not want to run the risk of being involved in a sort of uncharted public process in the pilot program.

And that again because we're privately funded, unnecessary risks need to be avoided by me and my team as much as possible. Nothing wrong with the criteria and in fact we worked with Jennifer and Vince and that team trying to figure out offline how to expedite this process as much as we could. And we offered to do that. And that was a sort of a heartfelt discussion and work product that came out of the Gordon Butte licensing regime.

MR. HANSEN: Ms. Wasserman, were any of the criteria or sorry were the criteria reasonable and practicable?

MS. WASSERMAN: I'm sorry. I think that the criteria restated a series of obvious components. Roughly they can broken into two categories. Impact analysis and process.

I think if you have sufficient information and to quote from a very old British television series from the Prisoner, what is the key? The key is information. And all of the impact criteria that you describe little or no change to surface or groundwater, listed species. Those are impact. But it's really going to turn on how much information do you have for somebody say at Fish and

Wildlife to get to their no action. And you don't need to break it out by specific environmental medium or species.

So you had one set that was in impacts. The other was process. That is the property rights, the ownership in the event that you have federal dams involved.

The criteria refined, I think they could have been reduced to those two. And I think there could have been one more added. And that would be the extent to which initial consultation work feasibility, work prefiling work, however you care to characterize it, has been sufficient so that you can come to this at the point where you'd be ready to go with a PAD or an ICD. They -- that's not clear from this, but it really comes down to how early are you doing your own consultative work? And is that going to pass muster rather than breaking them out into each individual criterion? It is all about information.

MR. HANSEN: I do believe the original solicitation did -- any application for the process did request documentation that’s consultation had at least started. So it was pointing towards that.

Ms. Klein, how do you -- did you feel like the criteria we’re reasonable and practicable from your point of view?

MS. KLEIN: You know, there are, from -- you know, from the list to me again, those are very standard if

you're looking for a no or a low impact project. And that's what regulatory is really focused on as well. You know, what are the impacts to the aquatic resource. And so, those criteria from our perspective makes sense if you're, you know, if you're operating it, if the criteria are being met regarding flow, then that means the impacts were probably authorizing are relatively minor. So to me, that's a criterion that would make sense. And would be -- that's really our focus.

The impacts to endangered species and everything else will come into our review, but I think that was probably a good way at getting to what our program would ultimately consider.

MR. HANSEN: So on the other side of the coin, did the criteria impose any unnecessary limits? And along with that, did you think that there should have been additional, different, or no criteria? And I want to back up again and start with Mr. Borgquist.

MR. BORGQUIST: I understand why these questions are coming in the forefront of the report you need to write. I just think for a -- I'm going to come back to this. There was nothing about the criteria that put us off, nothing about what staff had to say about any of that, that put us off. It just seemed like it was an unnecessary question mark that we weren't willing to tackle, you know, with this

project.

This sort of feeds into a comment I wanted to make to the group that doesn't really get to your question, but it's a philosophy that we brought to bear in the licensing process we went through with FERC, which was we did a TLP kind of modified, I would say. Where we worked with FERC to try to figure out timelines and a process and an overall approach that could get this thing licensed as fast as possible.

But I really believed it was correct for us as developers to have our hands firmly on the controls of how this was going to go. And that's important -- most important in managing the stakeholders.

Because FERC, we interact with FERC on this higher level. But back at the local and state level, we have lots of relationships that we have to manage. And sometimes the timing of that is critical. And the idea that we're responsible, not FERC, we're making the decisions, if things go badly, it's our problem and our responsibility. And so this whole business of the pilot and other ways that take our hands off the wheel and so that we're not commanding the ships, so to speak, we try to resist or we've resisted.

MR. HANSEN: Ms. Wasserman, as the developer, do you feel the criteria impose any unnecessary limits or that

should have been additional or different ones?

MS. WASSERMAN: I don't believe that the criteria imposed excessive limits or constraints. I do think that the criteria didn't take a look at some of the things that developers do have to look at.

We've all been talking about it. In order to have sufficient information, you need investors who have some certitude that you were going to get a license and you were going to get it in less than five years, seven years, what have you.

But to that end, the criteria also -- just repeat essentially the same. We need impact analysis. We need process analysis. So they weren't constraining, but I would bring that to any project that we were developing. We initially thought about the pilot project program. We concluded we're doing this in two years and two and a half years respectively without a pilot project. We're doing it within -- we ended up going the exemption route, but we had no difficulty doing that.

A key to that is again, a comment Carl just made, when we began initiation our developments, the first people we went to were the safety DEPs, and the state wildlife agencies. We were going to get a very clear sense from them. They're not as familiar as the federal agencies with what is going to be expected. And if there are going be any

early warning items or extra information particularly under something like a 401, where the state does control, you need to know that before you go any further. They're the people you're going to work with most closely. They are either going to be your advocates or stay out of the process with the federal agencies. And I find that that really was not emphasized here. And I think it could have been.

I will say I have a certain partisan view. My company uses one form of innovative technology. We don't go for big dams. We use a process that allows us to demonstrate things like impact fairly quickly and fairly on -- having said that, it only works at certain areas. We use an Archimedes screw generator. And that's not applicable.

We have 8,000 nonpowered existing dams in New England. Virtually -- which is where I come from. Virtually every one of them is historic. We are currently working on projects in the Delaware and Lehigh Valley in the Blackstone National corridor. And all of those projects are -- they're fairly straight forward in terms of your criteria, but the local and the state involvement in those is intense. And there's no mention of that here.

MR. HANSEN: I'd like to ask the rest of the panel about the criteria, about -- is there reasonableness or their unreasonableness. Ms. Koerner, do you have

anything to add?

MS KOERNER: Well, unfortunately, the -- or fortunately, the pilot project was not on national forest land. So we were not engaged in that particular project. And I did not see that I think there was one other applicant was not on national forest land. So there was not the federal land issue.

The Forest Service filed comments following the first workshop. We expressed concern that there's a very short time for FERC staff to determine the applicability of this process for those who seek to use it. Given the criteria, we made some suggestions for more fine-tuning the criteria. It's -- a lot of that criteria, one could assert that that is the case, the positive case, but where is the proof? And that's mostly the issue. I don't know if I would call it information, but that -- on that order. There is not enough specific information or enough handholds, I think, for a licensee or an applicant to actually provide what the Commission needs to know in order to make a decision in 15 days.

MR. HANSEN: Mr. Little, do you have any comments on the criteria?

MR. LITTLE: Yes, thank you. I think that they're effective in principal. And I would agree with what's been said here about the -- you know, these are

presented at a certain level.

And one of the keys, to me, I sort of looked a little bit past them to the fact that you're -- that this also discusses the need for consultation, which is from a certifying agency's perspective, or at least our agency, that's really the meaningful event is the commencement of any kind of consultation. And these criteria would ordinarily be on the table and with the intention that we know the discussion for perhaps ultimate settlement. Mitigative efforts is on everyone's mind.

This is the -- this language is the introduction to that entire series of events. And so I -- I think it's encouraging. And the compression of time is what to me has provided more urgency to this. Not that we're not experienced with it, not we don't want to encourage it, but compression does bring about a certain heightened risk with it.

And I would say that's the kind of thing that wasn't -- the door wasn't -- it wasn't mentioned here. What was, you know, asking would you while you're appreciating the process bring along with it, you know, what might be a -- the frustrating elements of it. We're hearing about it today, but I'm not sure it at the time it was issued, that it asked people to keep a mental log of that as well.

That being said, I think the discussion earlier

this afternoon was very productive in that it shows us how it works and how it work will work in a good, you know, or favorable situation. My only thinking, and it goes to what I was just saying, is that, you know, what are we supposed to do with this when it may -- when it has a greater propensity to failure or frustration, if not failure?

And, you know, that's where it again falls back to the consultation process. And I think I was in this room years ago when we were working on the ILP and talked a great deal about front loading. And which was ultimately built into that. We, by the way, took that back to New York state and built that into some of our processes and it's been successful.

So the element of front loading, I think, is mentioned here. And I would have probably made more of it and asked people what they would want to add to it.

MR. HANSEN: Mr. O'Keefe, any comments on the criteria?

MR. O'KEEFE: Yeah. So just a couple of thoughts is one, just holistically, I mean, we support opportunities to implement hydropower on dams that are used for, you know, navigation flood storage, flood control storage. And it's important to us to have efficiency in the process where, you know, there's projects that a site is appropriate for adding hydropower on an unpowered dam. I mean, a faster process is

of interest to those of us in the NGO community.

I would say, you know, criteria makes sense. They're important. The words on the page matter in establishing the privilege to use the accelerated process that's outlined here is important.

I think, you know, the short timeline to make the determination, you know, is somewhat of a concern. And what's the exit strategy if, you know, if this process turns out to be not an appropriate as you're running resource issues? And with only, I mean, the challenge we have before us is with only one project, you know, going through this pilot program, it's still a little bit difficult to game all that out. So those are my thoughts on that.

MR. HANSEN: And then back up, Ms. Klein, do you have comments on perhaps the criteria imposing unnecessary limits or if there should be different ones?

MS. KLEIN: You know, I don't. I don't have any comments on what FERC chooses to include as its criteria for its process.

Now I do think one of the risks we see more often for the regulatory program is that very often developers either don't realize or don't think that the Corp's subsequent review is substantive. And I can see where you can you can spend a lot of time quickly getting through FERC's process in two years, but if you don't talk to the

Corps at all during that process or the regulatory folks, time can really be lost if you start talking to us very late and we have additional information needs that we could have flagged earlier to better align with FERC's needs. So I see that being the bigger risk.

And that's not a fault of FERC's process. You know, FERC is managing it's own laws and regulations. But I think not having -- while not having to acquire any sort of documentation of how far you are working with the Corps, it might be prudent to help avoid some surprise by at least incorporating some suggestion or recommendation of how far you in your conversations with the regulatory program or the 408 program, which I know you do sort of account for more explicitly if you want to use a Corps project.

But so again, I think is great to getting -- it sounds like it -- seems like it's great for getting through a FERC process in two years, but it doesn't really, I think, capture the real length of time needed if all the agencies aren't working together from start to finish.

MR. HANSEN: I'd like to now open it up to anyone in the audience, including members of the first panel. Does anyone have any question or comments specifically on the criteria from the original solicitation? I know Ms. Swaminathan. And if you do have questions or comments, if you weren't here for the first panel, please step to the

microphone in the front. State your name, your affiliation. And if you don't mind spelling your last name, so the court reporter can accurately transcribe it. Oh, and make certain that the microphone is on. Thank you.

MS. SWAMINATHAN: Is this on? Yeah, my name is Ramya Swaminathan. Last name is S-w-a-m-i-n-a-t-h-a-n. I'm at Rye Development. We're the licensee for the project that did go through the two year pilot process on Kentucky lock and dam 11.

My -- I have a comment and a question. . The comment is so we're a developer of this kind of project in a number of jurisdictions, including a number of projects on USACE dams. And at the time, we considered all the projects in our portfolio for participation in this pilot process.

My question is to Kyle and to Amy. The feasibility requirement from federal dam owners was problematic at the time. And it was conveyed to us that it would be problematic for USACE to determine feasibility at that time. Do you know if USACE would be willing to consider providing that kind of qualification up front? And if not, I think that's a major group of dams that in many cases are best suited to this kind of development that are essentially excluded from treatment in this pilot process?

MS. KLEIN: I will defer to Kyle on that since

the regulatory program wouldn't be issuing the feasibility letters. It's really directed towards Kyle's program. Thank you.

MR. HANSEN: Yes, Kyle, thank you. Please I need you to answer in the mike up there. Thank you, sir.

MR. JONES: I'm Kyle Jones. I'm not sure what kind of answer I can give. I talked with Kamau earlier in the day regarding your question. And so, I probably would be better certainly to provide it for a record or something. I, you know, I am not sure I understood the question as well, you know, well enough to give you a good answer.

Certainly as far as dealing with the individual projects, you know, our 408 process, you know, will go on through to make sure that your project suits our project as far as the structural concerns are. But as far as feasibility studies or anything like that, I'm not sure I am really the best person to try to answer that. And so I apologize for not have a better answer. But certainly, if you get in touch with us, we'll see if we can give you a better answer. Okay.

MR. HANSEN: Any other comments or questions from the audience on this topic? Okay great. I don't think so. Dustin, do we have any phone comments or questions?

MR. HAHN: We have no questions at this time.

MR. HANSEN: Thank you, Dustin. So we'll move on

to our second question. Are there environmental, economic, regulatory, or legal factors that make a two year process not practicable? I'd like to start by directing this to Ms. Koerner.

MS. KOERNER: There's usually a number of field studies involved, which can take more than one season. If the applicant has done a lot of pre-work and provided that information and has given the commission and other agencies and other parties involved enough information to show that it qualifies for those criteria, that's fine. But should there be a need for additional seasons of study, that would become very difficult.

Some of these projects may require, if they are on or affect national forest lands, may require a special use authorization from the Forest Service under the Federal Land Management Policy Act, but I -- it usually does not interfere with the licensing. It's usually subsequent to the licensing. The Forest Service attempts to tier on to the Commission's NEPA document. And it certainly would not stop the license from being issued. It's a subsequent addition.

But if we need additional information for the special use authorization that was not provided during the licensing, I can see that that might have an economic impact on the applicants.

MR. HANSEN: Mr. O'Keefe?

MR. O'KEEFE: Yeah, so a couple of thoughts on this one. The first is I think there's some best practices here that we need to make sure are applied as well. And so, in addition to, you know, what we haven't, you know, written out in terms of, you know, the formal requirements of a process, you know, I was reviewing some of the recent issuances over the last few years from the Commission, license orders. And I looking at the ones that were implemented in a relatively, you know, short time frame.

And you know, the factors that really, you know, stand out or just, you know, sites free from controversy, adequate baseline information, which has been entered -- discussed here, and consultation with stakeholders early and often.

And I think there's an opportunity I think about how to move forward with this, not only from a regulatory perspective, but also I think there's an opportunity for the Commission to really codify some best practices around this. And I think that would be extremely helpful.

The other thing, you know, the comment that was just mentioned about the Corps dams, and this -- the -- you know, when we go back to the requirements and securing that confirmation of conceptually feasible and what does that mean, that seems to be somewhat of a barrier at least for

the those dams.

And I think, you know, as far as our interests, you know, from the perspective of the hydropower repower reform coalition, you know, finding a way to get past that barrier. And you know, we have this MOU now between the Corps and the Commission that, you know, will hopefully, you know, provides some opportunity for processes to operate in parallel.

But I think, you know, if there's some different language there. You know, if there's a hang up around, you know, what the definition of conceptually feasible is, and if there's some other criteria that we might use for that, I -- of all the criteria that I'm looking at, that's seems to be one of the issues that is, you know, a hang up on this two year process for at least those Corps facilities. So that's my thoughts there. Thanks.

MR. HANSEN: Mr. Little, any roadblocks that you can see?

MR. LITTLE: I don't see absolute roadblocks. And I would concur with Mr. O'Keefe that it's -- I would look for just some sort of memorialization of this, whether it's codification or something else, which would be a stakeholder process. And I think that would put more flesh on the bone here.

There are -- the question asks whether it's

practical or not. And to me, that presents an opportunity to I wouldn't say load this up, but augment this with the stakeholder experience from all corners of the country. Because you know, in hearing about the Kentucky experience, we're starting to get a sense of how the studies were performed. And you know, the U.S. Forest Service has a concern for multiple year studies. Maybe the Corps does as well. Certainly my agency would be concerned during the consultation process about the opportunity in the event the first year of studies failed or required for some reason a second year of studies, what are the opportunities for that. That goes to that sense of practicality.

And in terms of a more formal impediment or factor, let's just call it that, the list of the sequence of events in the -- that's attached to the notice from January of 2014 had the -- and this is probably common for most states, but had the water quality certification coming prior to the issuance of an EA. And at least in our state, that presents an obstacle because in a regulatory provision, we're required to have an EA first before we issue our water quality certificate. It's a completeness issue.

And so, would there be a way to confront that to encounter that and to work with that?

Kentucky has had a very interesting experience with an interim water quality cert, which is -- could be

someone's answer to our problem. I don't know if we have authority to do or not. But you know, they're -- that's one issue for us that would, while not having a concern with the two year period, would be something that would have to be gotten over.

Who has to get over it, I don't know whether it would be the Commission or the state. I'm not sure. Or maybe both, but that's the kind of thing that needs to be put on the table and given a full fleshing out, because there would be regulatory requirements that our state and maybe others have to confront in order to work with the compression that this contemplates.

MR. HANSEN: Ms. Klein, any thoughts on this topic?

MS. KLEIN: I think a lot of things have been covered. I think from the two year process, if it's just FERC's process, I have no opinion really on whether or not FERC process only is practicable in two years.

Now if you're talking both FERC and Corps being done in two years together, again, I think that's definitely very -- still very feasible. Our -- the revised MOU we issued in July this past year tries to outline how we can best align our processes in order to get to a decision around the same time. That MOU's specific to using it at, you know, at Corps projects, but the concepts remain the

same if the Corps projects aren't involved, how regulatory and FERC can align.

With that said, in order to align, that is obviously a bigger economic investment for developers to be trying to fulfill the requirements of both agencies upfront. So I mean it's -- there's obviously cost if you want to move through the processes in parallel instead of sequentially. There are more upfront costs, a lot more effort, but it definitely can be done. Especially the, you know, the smaller the project, obviously, you know if your EIS level, that's usually what gets us into the two, three, four year mark, but if you're more the environmental assessment level, that's usually a smaller project for our purposes. And we can usually get through our review more quickly.

There always is complicating factors, depending on the site. Is it an historic dam or an historic facility being modified? Are there issues with endangered species, all these other laws both agencies are responsible for complying with can add complexity, but that doesn't mean it's not practicable, but it could cost more, so.

MR. HANSEN: Mr. Borgquist, from a developer's standpoint, can you think of some factors that would make these two year process not practicable?

MR. BORGQUIST: Ryan, I can think of a thousand. Here's the problem. Every license application on a facility

that we're talking about here is going to be unique. Every set of stakeholders will be unique. The state issues will be unique. I think if FERC is ready to try to fit its work into a two year period, and then allow the developer and the development to take the time it needs to deal with the issues that come down the road, because some of them you don't even see until you're halfway through the process.

So here I am, I'm a lawyer. I don't have good ideas about laws and regulations that fix this. And I'm sort of surprised I'm going to say this, but I really think a lot of this is a FERC culture issue. In other words, we can only do so much with these rules and regulations. And sometimes we try to fix something and we end up creating a mess in the process, because we're not flexible enough to deal with the things coming down the road. And I think about everyone of these projects has got its own challenges that need to be navigated uniquely to that project.

So and you can't put that in -- you can't codify culture. You can't codify a feeling of problem solving with your regulator to try to navigate all of this.

Now I -- they didn't pay me to say this, but I certainly -- Jennifer and Vince are no shrinking violets, right? We had a real and honest relationship about the challenges that Gordon Butte, but I also felt like I was dealing with people that wanted to problem solve and get the

job done. And that ended up carrying the day.

I still come back to this. Again, you're going to make a report to Congress. There's got to be enough flexibility in this program and this process to make sure that you can account for different things and allow the developer and the development to bring stakeholders along and bring the process along in a way that's going to be successful. And I'm proud of what we did with Gordon Butte, but 90 percent of our work was not with FERC. It was with local and state agencies that we fit into the FERC process.

MR. HANSEN: Ms. Wasserman, anything to add?

MS. WASSERMAN: Why do lawyers always --

MR. HANSEN: Microphone please?

MS. WASSERMAN: Why do lawyers always equivocate? I don't about that. That's the joke. The answer is sometimes. In an ideal world, of course, there are no impediments. What we've all been dancing around is in order to make this work fast and efficiently, and still be defensible and supportable, you need to gather a substantial amount of information up front. You tell a prospective investor you might see a license in five years or seven years, they're going to invest in something else. I know from own experience how difficult that is.

So generally, that front load in order to make this work quickly, is a real disincentive to private

investment. Perhaps if there were a midpoint. If I could tell my own board of directors, well, I can't guarantee a license in two years. I can guarantee some sort of midterm assurance, something you can take to your bank as the likelihood of that. And I don't know how to do that.

But the point of it is to get it to work quickly, you need to give the people what they need. And that includes stakeholders, agencies, anybody who's involved in this, but to do that means substantial money. And if you can provide some assurance short of five years later, you might get a license, that would -- that is a driver that at least I find in private development is very, very difficult.

I think as far as the rest of it goes, honestly, the FERC process loads the initiative on the applicant. It's not the Commission that sits around dilly dallying. You -- we get to file our NOI and our TLP --whenever we wish. And it goes off from there. And I have found the Commission to be extraordinarily responsive in every aspect. So no complaint there.

I think the front end capital is a real issue. I think again, there are suites of dams where these would not be practicable. An illustration would be we work on -- right now, we're involved with at least half a dozen state owned dams in various states. And at least in New England, in order to acquire the property rights that FERC would

require, if you're going to be able to do that at all, for example Massachusetts doesn't extend more than five year leases, which doesn't help you with your investors. If you have a way to overcome -- some of the state leasing processes are always tied to public benefits and it's a balancing act. Again, if I have the information, I can show the public benefits. And I can get my assurance for your property rights requirements.

But my investors are going to have to bear that burden. So yeah, that can be a real problem. It's not as much of a problem when it's a privately owned dam or a -- federal dams have their own problems.

We do a lot of work with municipalities and with states. States see the process as, oh, got $10 bucks, want to buy a dam? Because in so many instances, they just don't have the resources to address them appropriately. So that is an issue on the property rights piece of it.

I will touch on this later, but I think you could make it more practicable if the Commission would consider the notion of programmatic NEPA review. I'll talk about that later. That would give us a big arsenal to work from.

MR. HANSEN: Something to look forward to. Thank you. The audience, does anyone have any questions or comments about this particular question, factors that may not make a two process practicable? All right, I'm not

seeing any. Dustin, anyone on the phone with questions or comments?

MR. HAHN: No questions at this time.

MR. HANSEN: All right. Thank you, sir. Oh, absolutely. Chairman LaFleur.

CHAIRMAN LAFLEUR: See if I can figure out how to -- explain a little bit more what you meant about a FERC culture issue? It caught my ear when you said it. Thank you.

MR. BORGQUIST: Sure. It's not -- I didn't raise the issue to say that there was a problem. So let me be clear about that. I think we had the kind of culture and productivity and tenor with the group we were licensing with that was good, but it's important. And it's hard to codify. It comes organically and internally. And again, I'm a lawyer saying these sort of touchy-feely things, but it makes a huge difference when you have a real honest forthright problem solving relationship with your regulator.

And people, you know, people ask me all the time, aren't there too many regulations? Isn't their regulatory burden so terrible? And shouldn't we try to get rid of these regulations? And my response to that is I'm really an environmentalist. I'm building the close the loop pump storage facility because I believe in clean energy. Right?

I've -- I submitted this project to FERC even though there were arguments to be made that I wasn't in a water way of the United States and didn't have to do that. I wanted to review and to be put through my paces on the project.

And it's the regulators that we deal with that can make all the difference in the world. And let's think about that for a second. Regulators -- the easiest thing for a regulator to say is no. That requires no risk. That's certain. It's protective of job security and the agency and what not. It's much more difficult to find a creative problem solving way to say yes.

And when you find those kind of regulators who are still trying to do their job, but finding ways to get the problem solved, that is like heaven, right? And anybody that's done project development knows you get some regulators that just -- they just -- their answer to everything is no, right? And you're trying to figure out how to do amorphous things to get the boxes checked and the job done.

So this -- Madame Chairman, this is important. I don't know how to codify it. I don't know what else to say about it, but it -- having been on the developer side of this and dealt with many different agencies and regulators, this is a by God real deal.

CHAIRMAN LAFLEUR: Well, thank you very much for your

comments. And I do know from a lot of different leadership experiences, culture is the hardest thing to change in any way. But it sounds like a little bit what you're saying if I could translate it is having a determination, a shared determination to get through a certain -- on a certain time frame if possible was part of this. And it's --

MR. BORGQUIST: Listen, I don't want to -- I've got -- I think they might fit into some of the other questions. I've got some -- we did some things in this process, this straightforward not a pilot project with the existing framework that worked. I mean, we did it in start to finish PAD to the issuance of the license, including board of consultants meetings in three and a half years on a billion dollar major hydroproject.

I think we could have been a little faster if the EA had been processed a little -- even a little bit faster, but I'm satisfied with what happened. I think, again, my relationship with FERC was real and honest. They were doing their job. I was trying to my job and it worked. And I have a couple of practical technical things that we did that I think were helpful, but really this culture thing was important and carried a lot of the day.

CHAIRMAN LAFLEUR: Thank you.

MR. HANSEN: Ms. Koerner had something she wanted to add and we'll let her have the final word on this

question.

MS. KOERNER: I wanted to echo Mr. Borgquist. The larger scale you go, the more likely you are to have multiple jurisdictions, multiple parties who are interested, maybe attract parties who wouldn't have been interested, except it is for a larger scale.

But the communication issue is a lot of what I think about when you start going for something like this. We already have communication issues as is, both internally and with other agencies and with the stakeholders and with the applicants.

As an example, I get a number of letters from Rye Development on a number of projects probably six to eight weeks after they were mailed, because mail sent through regular post to any federal agency in the D.C. area is first rerouted to be treated for anthrax. And then eventually comes back to the agency and is rerouted. So the idea that we could have timely communication, I really think we need to think about 21st century communication.

And there's also the idea of scheduling. Everybody has limited staff, shrinking staff, bringing larger priorities. For the Forest Service, the number one priority has to be public health and safety. So as much as we'd like to make this a priority, if we have limited staff who have to take care of that issue, they won't be taking

care of this issue.

Also going on a larger scale, what about the licensees who are going through the regular application process TLP, ALP, ILP? Are they going to be satisfied if this becomes a priority in their area over what they're going through on their own process? And I really wonder about that. Somebody else would have to address that. Thank you.

MR. HANSEN: Thank you. We're going to move to the third question now. Can a two year process be successfully implemented on a large scale for multiple projects on a consistent basis? I'd like to start with the views of Mrs. Klein on this one.

MS. KLEIN: You know, I'm not sure if I have much more to add on this. You know, the two year process, again, for FERC to do it, I can't weigh in on how practicable how it is for the, you know, for FERC as an agency to do it.

For the Corps, we're organized so differently, we have 1300 regulators in 38 district offices. So you're not having the same set of people reviewing multiple projects. You have probably a different person for each project.

So, again, if we -- as -- if we get the information we need, we can, you know, move forward with our review as quickly as that information comes in, recognizing again there's a cost associated with providing that

information.

So I think it's -- I think, again, yes, it can be successful, but of course, it comes at a -- there's tradeoffs and costs. For the Corps regulatory program, I don't see a barrier to two years that we haven't already discussed in the previous question.

MR. HANSEN: From the point of view of a state resource agency, Mr. Little?

MR. LITTLE: Thank you. I don't know how we can't go back to the second question to answer this one, so I'll take it back to the second question, because practically, as a practical matter, I think in most cases, one could look at a development, a proposed development and work a way to do that in a two year time frame.

But when I was thinking about the questions, I started to ask myself, well, what's the magic of two years. And whether this actually, you know, in the alternative is a question, and this is something that Mr. Borgquist was to me alluding to, is it also a question of how do the developers and agencies and all these interests get scheduled and prioritized? Is it something that fits within two years or in some cases, more or even less? And would that meet with the goal here to have -- maybe we've falling into the pre -- the consultation pre-licensing phase here of another type of MOU that would say, you know, the ultimate goal is to

have this done in concise phases and the early consultation phase takes this much time. Your NEPA process takes that much time during which other things are happening on their own schedule. That may be a two and a half year package of something of that nature, not necessarily two years.

The problem with what I'm talking about, of course, is it's an intensive negotiated event or process, but I wasn't sure what the magic of two years was. And I don't mean to use magic as a pejorative, but it makes me think that from what I heard earlier this afternoon and what we're saying here today, this afternoon, it's working out to be more of an interest based problem solving exercise on a case by case basis.

I think the two year time frame is well selected, but I don't know if it necessarily has to be adhered to, because of the things that we've been talking about. What's the -- what's more important to an applicant? Is it the certainty that comes with hitting a deadline, a two year deadline perhaps or the certainty that comes from knowing that your studies are going to be done by a date certain, regardless of where that fits within the general two year range, something of that nature might be another way to approach this and still accomplish the same goals. I just -- I don't know if that's the case, but from what I'm

hearing this afternoon, it seems like that may be a way to work with this and accomplish what the Commission may be trying to do, which is, you know, expedition focus and as well the fact based and well organized discussion that Mr. Borgquist was talking about, which seems, you know, I've been there. I get that, but that's the work these things.

MR. HANSEN: Mr. Borgquist, could your companies handle multiple projects at once going through this process?

MR. BORGQUIST: Yes.

MR. HANSEN: Would that be something that would -- not to ask you a simple question, but that clearly would be something that would be of interest to you and your company?

MR. BORGQUIST: Let me just say, I think the -- from the developer's dream, okay, would be that you were ready to do a two year process, but also flexible enough to allow us to let us choose to slip that, well we needed to, in order to be effective on the overall grand scheme of things, right? So we didn't create this artificial two year thing, but some of the comments that were made in the first panel really ring home, right? It's the certainty, it's the scheduling, it's the predictability of what process we're going to go through, even if things slide or they get adjusted for realities that happen on the ground.

And I'll give you an example of this. In the

Gordon Butte timeline, we drug our feet at one point for a few months. We thought we had an agreement with the state to buy water out of a diversion downstream and then divert it at the project site.

And that deal fell apart. And we had to go pursue another avenue to get the water rights sorted out, where we knew the water right at least identified and defined how we were going to do that, so that we could make our studies make sense, so that we could fit into the NEPA scoping. And so there's all these multiple things going on at the same time. And my fear, though I worry that my brothers and sisters in the development community are -- would kill me for saying this. My fear is that we're pushing too hard, too fast artificially and not allowing enough flexibility to adjust because sometimes that adjustment is what's necessary to keep the stakeholders sorted and the process moving in the right direction.

So I would encourage you whatever you suggest back when you report is to make sure that there's enough flexibility in the process for all of us to make those adjustments.

It's the coming to the table early and saying with the developer and the regulator, okay, these are the things we need to do. This is generally how we're going to do them. This is generally how the time was going to go and

the process is going to be run. That kind of front end planning and information is helpful to investors. It's helpful to keep everybody working on the same goals and that needs to be a part of how this gets resolved. But could we do these -- can we have these going on at the same time? Absolutely.

MR. HANSEN: Ms. Wasserman, same for you.

MS. WASSERMAN: Yes, same answer. However, there's a but. And the but is we're going to need a little -- I would recommend this in your report, a little bit more assistance from the Commission as EERE did when they were trying to support the development of offshore wind with BOEM. They staked out areas of the country, figured out the criteria, and they did programmatic NEPA EISs and EAs. That took a tremendous burden off of developers. We knew where and what and what would be expected. It took a tremendous burden off of the state natural resource agencies because they knew that what dropped out of those EISs and EAs were the things they were going to have to focus on.

I don't know if you'd structure that geographically. Commonality of technology, commonality of inputs. There are any number of ways that could be sorted, but that upfront sort in fact would certainly standardize the environmental review process, would help state agencies with the resources they need, so they don't have to revisit

this stuff if they choose not to, and would certainly give developers a much clearer goal of where and how and if you want to do something in two years, these might be the best fits.

The second piece, and I think that Bill had mentioned it as well as Tom O'Keefe, was best practices. Again, if the Commission were to develop a checklist of best practices as they have done in say the in conduit hydropower conditional proceedings, you could use that list if a proponent is willing to commit up front to the use of those best practices, you might be able to issue the kind of interim assurance our investors need short of a five here license process.

I know I'm throwing a good deal of this back on the Commission, but it has worked in like situations where you have competing jurisdictions, inadequate state resources, overworked permitting staff, it just makes it simpler for everybody. And it lets everybody know up front what is going to be out of the realm of consideration and what is going to be worth investing in?

MR. HANSEN: Mr. O'Keefe, you represent, you know, a large stakeholder group. How would large or huge numbers of two year processes -- project all at once affect your group and your ability to participate?

MR. O'KEEFE: Well, it would be some work, but if

we're picking the right sites for this, my personal perspective is this could be, you know, doable if we're picking the right sites for these projects.

You know, just a couple of thoughts here. I mean, the one thing I'd, you know, when you say large scale or multiple projects, one caution I have is if we're talking about multiple projects in a basin, you know, do we have the ability within a two year time frame to really think about that in a way that's integrated, in a way that's comprehensive for a single basin.

However, I know, you know, the multi project environmental assessment you did for the Allegheny River project, I mean, those projects, I think that's a good example of being able to have, you know, a single NEPA document that is integrated across, you know, potentially a range of projects. So that's a way that like you can potentially do multiple projects, but still have, you know, one environmental process that we're engaged in.

And then, as far as like, you know, rolling this out to, you know, multiple projects, I mean, I think there's still this sort of nagging question of, okay, we only had, you know, one project take advantage of this. So it's still like a little bit premature to tell some of this stuff.

And I think one of the things we're going to be really interested in and, you know, I've heard some of this

today, and it's been very informative, the discussion, but just a better understanding of why there was only that one project and what the true barriers have been at least in this initial phase. And I know that will help us, you know, inform our comments. And I would just, you know, invite anyone who's engaged in this, you know, to reach out to us before we file our written comments and it'd just be really helpful to understand this better. So that's one thing.

And the final thing, I just wanted to make a point here on the culture, the FERC culture issue that was brought up. And I remember I actually got the quote here from Ann Miles when she was testifying as Director of the Office of Energy Projects before the House Energy and Commerce Committee a couple of years ago here last year. This was two years ago. And she said, "It is important to note that in many instances, it is applicants, federal, and state agencies and other stakeholders that determine project success and control whether the regulatory process will be short or long, simple, or complex. For example, where a developer picks the site that raises few environmental issues or works early to build rapport with stakeholders and where agencies and other stakeholders commit to fully and timely engage in the regulatory process, project review can move very quickly. In these instances, licenses can be issued in two years or less."

And so, in my own, you know, sort of cursory review over the last several years, you know, I was able to confirm this statement. And I would say, you know, the Commission is in a unique position as, you know, the mentor for developers that are coming and looking to, you know, take advantage of opportunities that they see out on the landscape, you know, to provide, you know, the advice and mentorship that, you know, as reflected in this philosophy here.

And I would say that in my own experience, just over the last, you know, five years or so, I have seen -- I'm very pleased with what I've seen in terms of, you know, just sort of the culture and philosophy of the Commission and doing a good job in this area.

I think there's opportunities to improve, but I like the direction that things are headed in. And I hope that will continue, because I think it's been a good thing. And just in terms of looking at the engagement of Commission staff early in the process, some of the information that you put on the website that's really helpful in providing guidance, I hope that will continue. And I see it as, you know, positive work in that direction. So thanks.

MR. HANSEN: Thank you. I'd like to turn to the audience, including the first panel. Does anyone have any comments or questions on the -- on this topic? Excellent.

I don't see any. Thank you. Dustin, do we have any questions or comments from our phone participants?

MR. HAHN: No questions at this time.

MR. HANSEN: Thank you very much, Dustin. All right. We move to our fourth question of the afternoon. Are there any elements of the existing licensing processes that could be applied in new ways to consistently expedite a processing of applications? I want to go first to Ms. Wasserman on this question.

MS. WASSERMAN: I think there are. I don't know if strictly speaking this is within the existing license process, but you all demonstrated it on the first panel the notion of taking so much of that front end risk involved in acquiring water quality, certifications, acquiring historical preservation concurrences, etcetera. If the Commission would be willing to take that same approach and say, yeah, we're going to take these very time consuming and very expensive studies, assuming there's sufficient information and there is a rule about what's sufficient information, and we're going to make those post licensing preconstruction conditions. That would certainly help with private investment. You get your license much more quickly. And you have a very good idea of what you're going to have to do before you actually invest the money in construction. That, I think is something that could be applied. I've not

heard it applied outside of this pilot process, but analytically, if it can work there, I don't know why we couldn't modify existing processes to just shift the pre and post licensing requirements.

Secondly, I think that perhaps the burden is on us as developers, but I find that too few people, maybe this goes back to the topic of culture, FERC culture, actually exploit the opportunities they have. They don't call the Commission when they have a question. They don't go to the state agency. It's this stay below the radar and you'll get it done. The Commission's tried to be out there, but at the risk of sounding, you know, stupid, you have to keep pounding that into people's heads really come to us. We're not here to enforce against you. You have this problem with that problem. Come to us. Maybe we can alleviate it up front. I don't think that lots of people really understand that mentality. And, again, I think that potentially goes into the question about culture.

The other point I would make here would be that the Commission within the licensing has tremendous discretion. It is amazing what I have learned in asking questions. But the discretion for things like waivers, separate and distinct from the waiving of a draft license application or a final EA review, but waivers on other topics. The discretion is enormous. I secured one in order

to be able to qualify for repairing an existing structure at the request of a constituent group that ordinarily would have thrown me right into the ILP process. I brought it up. We discussed it. All of a sudden, this is not going to be an impediment. They did not interpret it as sufficiently diversionary or in this case the inundation that would result, wasn't going to be long term enough to make a difference. That's not in your regulations. I called somebody on the permitting staff and I asked. And I think the Commission could use that discretion a little bit more creatively if they wish to. And still we're within the rules.

MR. HANSEN: Ms. Koerner, you have a lot of experience with FERC licensing. What are your thoughts on this topic?

MS. KOERNER: In the comments following the first workshop, the Forest Service suggested that rather than come up with a fourth licensing process, which might involve amending the Federal Power Act and a rule making in yet another process for everyone to learn, Forest Service suggested that the ILP be amended to be able to support this two year process. And we listed a number of ways that the ILP could be amended. And I think we still stand behind that.

Certainly, there's a push back today to adding

more regulations. I don't know what you would take away if we're having the one for one regulation removal, what would the Commission take away? I have no idea, but I think that's something that we really need to consider.

And everyone here who's had to go through learning three different licensing processes, I think the ILP is well enough constructed that it could be fixed to support this. And I think this should be supported.

MR. HANSEN: Mr. O'Keefe, would you like to chime in on this?

MR. O'KEEFE: Yeah.

MR. HANSEN: Microphone, sir? Thank you.

MR. O'KEEFE: Okay, so yeah, just a few thoughts on this one and just kind of following up on the point of opportunities within the integrated licensing process. We had a couple of specific ideas. And, you know, one, I think there's some opportunity to shorten the time, too, should the notice on the notice of intent and preapplication document for noncontroversial projects where scoping and defining the geographic scope of the project can happen faster. I think there's -- we see opportunities for standard studies that could be applied and implemented.

There's opportunities to -- maybe we could skip the draft license application step. And, you know, give them the scope of some these projects, I think there's some

opportunity to expedite the preparation of the environmental assessment.

I think in looking at these, one of the questions we have and it'd be very helpful for us as you're, you know, kind of thinking about this and reporting back to Congress is what do we need to make these things happen? And my assumption would be some of these things, you know, you have some existing discretion. Maybe some of these things it just requires -- it's a staffing and capacity issue. And being able to, you know, distinguish and understand, you know, the differences on, you know, looking at some of these things and what the limiting factor is would be helpful.

And then an important point that I really want to make here in terms of expediting, you know, having things happen faster and more efficiently is a good thing, but I want to make sure from our perspective that that's not done at the expense of opportunities for improvement in -- of the resource and specifically to environmental considerations.

So let me just give you a couple examples of that. You know, if you're doing a substantial modification of a dam and looking at some of the recent license orders, you know, these retrofit projects, hydropower on existing dams result in fairly substantial changes to the structure of the outlet works and all that sort of thing, and offers a lot of opportunity to improve things like that temperature

condition below the facility, total dissolved gas issues, fish passage issues, like we saw in the Holtwood project.

And so, when you have those opportunities, from our perspective, we want to make sure that the project's not happening so fast just with the goal of expediting things, that opportunities to improve the resource are lost in that. So that's something I would say is really important, because in expediting the process, we want to make sure that is not done at the expense of, you know, under the Federal Power Act, you know, having a development that's best adapted to the comprehensive plan for the waterway. So just a couple thoughts on that. Thanks.

MR. HANSEN: Mr. Little, do you have anything you'd like to share on this one?

MR. LITTLE: Yes, I'd like to second what Ms. Koerner was saying with respect to the ILP. It was coming to that from a slightly different direction than our experience, which has been that there have been a lot of occasions where applicants decided they didn't want to use the ILP. So which was a disappointment to us, because we were ready for use of the ILP, particularly the front loading features.

And I understand why the applicants thought that they would rather not use the ILP, but I'm wondering if a two year process or a compressed process of some sort is

more of the carrot that's needed and whether re-codifying the ILP to place this nicely within the ILP might be one of the things to explore.

The other thing I would offer is that to augment the existing process is the use of, you know, somewhat formatted or generic processes. And there was mention of like a generic EA that would get us partway down the path, the NEPA path. I'll plug New York state's environmental assessment form process for the state environmental review. It's a long and now automated process of that the project manager can sit in front of the computer and complete in an afternoon, I would say, if the homework has been done. And that gets our state environmental review process off the ground to a determination for whether there are adverse -- significant adverse impacts. So then you know which pathway you're taking for the state review. And I think that -- there is that element available to you already and could be perhaps enhanced.

MR. HANSEN: Thank you. I like to turn to Ms. Klein on this question?

MS. KLEIN: I have a little bit of a different take on this question as well. You know, FERC hydropower team and the Corps hydropower and Corps regulatory spent a long time working on the revised MOU. Again, that came out in July. And it wasn't a matter of trying to apply existing

processes in new ways as much it is -- it was an effort in trying to understand the existing process when you have two agencies with different requirements, different cultures, I think people might take it for granted that we just know how FERC processes their applications and the steps they take and vice versa. And there was just a lot of learning that occurred. When we really sat down and tried to understand the steps of each other's process in order to identify when we can most effectively engage with each other and then how to engage.

We lost, you know, we lost time communicating just for simple things, where you know, those letters requesting participation go through these weird security clearances and end up in a mushed unreadable format by the time the physical hard copy gets to the right person.

So things we wouldn't have known that were sources of delay, that I think we fleshed out in the revised process and are hopefully trying to mitigate. So I'm looking forward to seeing if we can just be more efficient between our two agencies, now that we better understand how to engage each other.

And I think we're all looking for feedback for those entities, for the developers who try to follow that process regarding what really works and what doesn't, because again, that was our best attempt. We solicited a

lot of feedback from others, but we do expect to learn lessons.

But I think that's something that could be done now to just make processes more efficient when you have two agencies that both need to accomplish NEPA, as well as a number of other things. And they just want to share and rely on each other's information as much as possible to reduce duplication.

And we think this will help us get there. And now it's just the proof's sort of in the pudding. And now we're just waiting for the feedback. Did we really achieve what we set out to, without changing any rules or regulations, but just trying to clarify for both ourselves and the developers of who's doing what and when in order to move through the process. So thank you.

MR. HANSEN: Mr. Borgquist, excuse me, Borgquist, you recently went through the licensing process. What is your take on this question?

MR. BORGQUIST: So we did, obviously, and again, we did a TLP. We came in early and tried to figure out how to expedite under the existing just this question really. And there were two big sort of targets of low hanging fruit for us to try to avoid and figure out how to avoid them.

One, we wanted the NEPA scoping to be early enough that we only had one study season to run, and not run

the risk of having to study for a year, submit our Exhibit E, then have the NEPA scope and have to come back for another year of studies because of whatever came up in that public process.

So what we did was we went after all the stakeholders engaged. We went and scoped our studies and got the blessing of all the stakeholders, state agencies, and federal agency, U.S. Fish and Wildlife, to bless that scoping. That then allowed FERC to do early NEPA scoping with some confidence that we were not, you know, outside the boundaries.

We did that. We were able to finish the study scoping studies, the NEPA scoping, all of it in a year. And of course, that's -- was just a huge time saver. And it was a risk management, because we knew what we were doing and what we had to study and how to get through that.

The second thing we did after the studies were finished and reports came out, we went to the agencies and negotiated all of the mitigation measures and drafted an EA that we turned in on our final license application as an exhibit E. And we used existing regulation. And the letters and blessing that we got from all the agencies filed into the docket to avoid a draft license process. And that's a -- first, it's a mystery what will come out of a draft process. We avoided. We also saved some time.

So, again, those are two things. No new legislation to do that. It's just an intelligent pre-planning, pre-negotiated, pre-directed process that we set forth with staff before we started. Again, on this idea that this is what we're going to do that works for you. This works for us. This is how we're going to get to the end game on this thing and try to be as efficient as possible.

MR. HANSEN: Is there anyone in the audience or from the first panel that would like to either have any comments or questions on this topic? Please remember to state your name and affiliation? I think you spelled your name already last time, but today, you need to re-do it. Thank you.

MR. BROWN KINLOCH: Yes, I'm David Brown Kinloch with Appalachian Hydro and Shaker Landing Hydro. And I had some comments I wanted to give, but before I get to it, I just have to say that I listened in horror to Ms. Koerner and Mr. Little talk about folding this into the integrated licensing process. That is the death of this. That is the death of this. We could never use the ILP in Kentucky, because I have a very difficult time. These folks here are so overworked, getting them to come to one meeting for the whole thing, a public meeting, let alone trying to get them to come to individual meetings on each of the different

topics, it would never happen. It would never.

The process would become so long. So if you want to integrate this into anything, it needs to go into the traditional licensing process, because the ILP would never work in Kentucky. It just would not work the way that the regulators are there.

Maybe you can integrate -- put it in the integrated license process, too, but it -- the integrated licensing process would take so long to do anyway, that I don't see how this could shorten it up at all.

And now to the comments that I wanted to make is that how this could work in an existing licensing process, let's think of it in terms. We're talking about a two year process. We're talking about a year before filing and a year afterwards, okay?

Now as I mentioned in the first session today, we've just been through this process for two projects just upstream, not at 11, at 12 and 14. And that took seven years, okay. And there was three and a half years before, okay. And I'll take responsibility for that. And it could be shortened up and will be shortened up in the future.

But three and a half years on project that is un -- not controversial, that the agencies have all agreed to a memorandum of agreement on for the Commission to take three and a half years to process it? And I'll take some

responsibility on that. There were some problems with the license. We fixed those real quickly. But still, talk about three years for the Commission to work on that processing?

So the value, the value that we can learn from the two process that could be put into an existing process is giving a time line, a time line that the Commission has to act in. If you've got a project, a license application that everybody's on board with, it's not controversial, why can't we have a time line that say within a year, you will process that application? Not three years. It makes so much sense.

So the real value of this is having a time line pre and post to get the work done in. And pre, that gives us the implement -- the reason to go to the agencies and say, look, we're trying to get this done inside this window.

And then post filing, that gives the Commission a timeline that says, you know, here's a project everybody's on board with. Let's get the license issued, so.

MR. HANSEN: Thank you. Any other comments or questions from the audience? Okay, I don't think there are any further on this one.

Dustin, do we have any comments or questions from our phone participants?

MR. HAHN: No, there's no questions at this time.

MR. HANSEN: All right, thank you. I'm going to let Tim make a quick remark here.

MR. FURDYNA: I don't mean to unnecessarily delay what's proving to be a very beneficial and thought-provoking discussion, however, on behalf of the Commission staff that have worked on the two year licensing process in both panels, I just wanted to thank Chairman LaFleur for taking time out of her schedule, both to attend the workshop and share her thoughts on the licensing process with us all.

CHAIRMAN LAFLEUR: Okay, thank you, Ryan and Rachel and Tim. And I wanted -- I want to first of all, thank all the staff that put together the tech conference and also thank everyone in OEP and OGC projects and OEA that worked on the two year pilot. I was -- and I want to thank everyone who participated in the tech conference for the candor and clarity of your comments, both the people at the -- sitting in the Commissioner seats. Enjoy because we can't sit in them right now and the people on -- at the microphone.

I wasn't going to mention this, but I just had something going through my mind is when I joined an electric company more than 30 years ago, several decades ago as a brand new lawyer, I mean, I wasn't a brand new lawyer, but I was brand new to energy and knew nothing about anything. And was assigned to some small piece of something on a hydro

project on the Connecticut River. And I said to the whoever I was working for like, well, are there people who don't like hydro? Isn't hydro good? Why is this hard?

And of course, I knew nothing and they had to sit down and explain to me how everything worked. And I'm sure that since I'm now in charge of working under the Federal Power Act, you'll be happy to know that I've learned a lot more about all of the laws that govern the nation's national -- natural resources and the Endangered Species Act, and how things work, and the different jurisdictions, and the different competing uses of water that are all part of licensing hydro.

But I try to kind of -- I was just thinking as I was sitting here and listening to all this to remember a little bit of that, you know, 20 something year old, who just thought like why is this hard?

And so, I appreciate the -- all the comments people have made about how we can do our work better, because that's something we all have to try to do. And the record is still open, so continue to send in your comments. And thank you very much, Ryan and everyone.

MR. HANSEN: Well, thank you very much, Chairman. It's wonderful that you were here. And we appreciate all your support. Thank you.

We have one final question for today's panel.

What, this part seems silly after the last four questions, if any, actions could the Commission take to further facilitate the timely development of hydropower at existing dams and closed loop pump storage projects?

We're going to want to hear from everyone on this one, so I'd like to start with Ms. Wasserman and we'll just continue around the table in a clockwise fashion, so that we can hear from everybody.

MS. WASSERMAN: I have two comments. The first is that when the Commission, thanks to the Hydropower Regulatory Efficiency Act expanded the 10 -- less than 10 megawatt exemption, that was tremendously helpful, but the requirements that you bring to bear typically on a single megawatt project or a less than single megawatt project and that you bring to bear on a 10 megawatt project can be very, very different. Yet if you're on the small end, you still got to satisfy what the Hoover Dam is satisfying. That's a tremendous disincentive for small projects and small development. And as somebody with a company whose working in the innovative tech side, it can be a tremendous disincentive.

Without the Federal Power Act being amended, and I know that's a ridiculous concept these days, I think within the purview of your own regulations, that could be further refined to further simplify something that is less

than 10 megawatts. All projects are not created equal.

I understand small project's going to have impacts. And it's a selective process. There still should be a process to exit the 10 megawatt and greater project performance standards, because they're just not workable, particularly if you're looking at existing, nonpowered dams where you might -- there's a reason they're existing and nonpowered generally speaking. And it might be that you're running into an engineering problem or a geographic problem, whatever. But for that group of existing nonpower dams, if you are coming in under 10 megawatts, there should be a simpler process.

Separate comment, and you don't have to change your regulations at all, would be to take a leaf out of the NEPA regulations. And we have our cooperating federal agencies and FERC is always the lead agency for that purpose. I think that the whole review process, both pre and post licensing, should be subject to an enforceable schedule, which under NEPA, you have the absolute authority to impose if you are requested to do so by a developer. That, I think, would help quite a bit. It would certainly provide a certain amount of reassurance on the private and as to the duration and the scope.

MR. HANSEN: Yes, Mr. Borgquist?

MR. BORGQUIST: By the way, it's an honor to be

here. Thank you for asking me and listening to these comments. Again, on the non-codified, nonlegal side, it's a strong project manager, a strong point person at FERC working with the developer. That doesn't require a change in anything. It's just something that you can do right now. It's a dedicated process of communication between the developer and that project manager. It's trying to front load decisions and be efficient and design a process for that project with whatever particulars go into it, to try to meet either this new thing that you're going to come up with or whatever you've got now that's existing. From my perspective, I'm happy with what happened without having a new set of laws in there. And I think we were -- for a billion dollar project, we moved almost as fast as we possibly could. So that's a culture thing. That was the relationship I had with the group working with this project. And I just leave you with that to think about also in the context of codes and regulations and everything else going on.

MR. HANSEN: Thank you. Ms. Koerner?

MS. KOERNER: I thought a lot about this question. I certainly remember at least as far back as the Clinton administration making lists of projects, federal projects, that generation could be added onto. So I'm not quite sure what is appropriate for the Commission. And I

think it has to make that decision. Is it going to go out and identify sites and identify areas? Is it going to go out and do pre-scoping, so that that is kind of taking care of with regard to knowing if there's going to be any environmental cultural tribal, other issues to deal with.

DOE is doing a number of things. It has its rapid tool kit to help applicants try and identify agencies and to whom they would have to apply and which issues. There's now a national hydropower asset assessment program out of DOE also that is trying to identify where is a good place for new hydropower.

I think mostly, what is reasonable for the Commission to do, though, is to assist applicants in looking at that particular basin. Who are the parties? What are the agencies? To whom do they have to get in touch? Anything the Commission can do about training applicants? Because I see a lot of that.

You know, we've had applicants for -- to build new hydro projects in wilderness areas, things like that. So I think anything you can do for education of the community or for assisting them in getting in touch with whomever they need to in the basin would be helpful. Thank you.

MR. HANSEN: Thank you. Ms. Klein?

MS. KLEIN: You know, just again, continuing with

what I've already shared, I think for our two agencies, for Corps regulatory and FERC, the most important thing for us really is ensuring we're communicating with each other and that the developer is communicating with the Corps both through the FERC process and independent of the FERC process, but parallel with it.

So often, that communication doesn't happen or is not as strong as it could be. And so, you know, we're working on ensuring our staff have the training that they need to know when to engage in the FERC process, When do, you know, how to engage as a cooperating agency? It's a lot of work upfront, often before we even have an action before us. So sometimes I think there's resistance to engage.

We're trying to break that, you know, break that barrier and ensure no, no, no, the engaging earlier even when there's nothing before us still pays dividends later. So while we're working that, I think it continues to be important for FERC to continue to reach out to us directly. When our engagement is requested, it can sometimes that -- those requests for engagement can get lost when they're buried in a public notice or buried in some more, you know, generic documentation.

So reaching out to us directly. I think one of the things that's also helpful, I don't know how often it happens, but I know that, you know, agencies, cooperating

agencies, can request and others can request various studies. I don't envision a time when a study the Corps needs for its process should be rejected by FERC as a study FERC needs. Now I understand FERC's authorities are different, so there might be circumstances when that occurs, but I think that can create confusion for the public or the developer into thinking that that study is not required for the Corps if FERC rejects it, which is obviously untrue.

FERC might not need it, but the Corps still does. And so, I think we can better align our process if we really have an agreement that if the Corps needs a study, FERC will ensure that study is completed, barring, you know, some sort of exceptional circumstance. That would be clearly communicated with both the developer and the Corps.

And, you know, that's again, that's all I really have for now. We continue. You know, the Corps continues to invest in training of its staff, training to be problem solvers, not you know, not an agent of no. Training our staff in the various requirements for hydropower, as well as all other types of developments. So it's -- it can be a big order, given that we are evaluating everything from, you know, small docks to buoys to giant hydropower facilities.

So I think FERC knowing and appreciating that the regulators you're working with don't have this niche hydropower expertise necessarily, our questions might appear

basic for your purposes, but for our purposes, we're really getting at our authority regarding just the discharge of dredge and fill material or work and waters. And everything we come at -- come to the table with is from that perspective.

And I think, again, I think we're making big progress. We've been working closely together. And so, I think that commitment to continue to work together will be key going forward. So thank you very much for the opportunity to be here today. I really appreciate it.

MR. HANSEN: Thank you. Mr. Little, please?

MR. LITTLE: Thanks. First of all, at sort of a granular level, I'm wondering whether the draft license application and perhaps some other aspects of the application process could be made optional, depending on what the proposed project is like and perhaps how, you know, how large it is in terms of the area within the project boundary or if it's coupled with other aspects, such as megawatts or the water quality values and things of that nature.

But also, I was encouraged to hear Ms. Koerner's talking about the efforts that have been made to evaluate assets already. And I know that in the Northeast, that's been done over and over again. And I think that if those efforts are ongoing, you know, there are always additional

variables, the economy in a larger sense and market forces with respect to renewable energies as well. All factor into this plus state policies for renewable portfolios. I'm wondering if, not that I want to thrust burdens on the Commission, but I would suggest that there be a continued undertaking of the combination of all these factors in the assessment of the need for these assets and the promotion or fostering of these smaller hydro assets.

Lastly, I just wanted to reiterate something that Mr. Borgquist had said, and others have said it as well, that really, staff has always done a good job in ensuring a dialogue. And the best opportunities that I've experienced were where there was -- and the burden is shared by all participants, where there's been a fully informed and interest based discussion, where that hasn't been as successful, the process has not been as productive.

So if the compressed two year process is to really succeed, I think that there has to be an eyes wide open assurance of that among the participants from the outset.

And lastly, I also want to thank the Commission for this opportunity. I think we're all going to benefit from it, because it looks like it's going to lead to more.

MR. HANSEN: Thank you. Mr. O'Keefe?

MR. O'KEEFE: Yeah, so I guess I have four

thoughts on this question. So the first one, which has already been alluded to, is studies. And I've been involved in too many proceedings where the Commission has said study's not necessary. That's been requested by a resource agency. And maybe have a licensee with, you know, less or a developer with less experience. And they sort of regard that as like, okay, well, it's not a required study, but it is required by the other resource agency.

And then by the time the developer licensee figures that out, there's a bunch of time that's involved, additional time that's involved, that wouldn't have been necessary.

So I would say in a minimum, like it would be great if FERC issues a study plan determination that it can make clear that some of these studies may be still necessary for resource agencies. What would be better is if there could be more deference provided to resource agencies, particularly those with mandatory conditioning authority. So that's one thing.

The second thing is on the MOUs. I think, you know, what we've been able to -- what the Commission's been able to put together with the Corps, I think that's a positive development. And hopefully, that will lead to proceedings that can happen in parallel instead of sequentially. You know, it's relatively fresh, so you know,

time will tell I suppose, but I think there's, you know, things are proceeding in the right direction there.

And then, you know, there's also been some of these MOUs with a couple of the states as well. And I think there's more opportunity there.

You know, the third thing, and this one's, you know, I guess not really under the direct purview of the Commission, but would require some involvement on the part of Congress, but you know, I think sort of cracking this nut with respect to potential duplicative authority with FERC and the Corps and what opportunities there might be to, you know, talk to some folks on the Hill about the potential for, you know, the Corps having exclusive authority to regulate nonfederal hydropower development at their facilities.

And then the fourth thing I was just thinking about here is, you know, with respect to, and this doesn't just apply to, you know, these projects that we're talking about today, but you know, some more stringent criteria for preliminary permits. I mean, earlier, you asked the question about capacity with respect to the two year process and capacity for multiple projects. And capacity would certainly be enhanced if we weren't spending time on projects that are just from the start clearly inconsistent with comprehensive plans that have been filed with the

Commission.

I've been involved in too many of these, where you know, we go through this process. We sometimes spend years on a project that ultimately, you know, falls apart, that if the Commission had applied some more stringent conditions at the -- or criteria at the preliminary permit phase, you know, we wouldn't have had to waste everyone's time on that, both from the developer's perspective, the NGO community's perspective, and the resource agencies and tribes. Those are my thoughts. Thanks.

MR. HANSEN: Thank you very much. Do we have any comments or questions from the audience on this final question? Sir? And I know you did so for the first panel, but if you don't mind restating your name and affiliation, sir.

MR. JANKEL: Sure.

MR. HANSEN: Thank you.

MR. JANKEL: Paul Jankel from Europe, Aquinovis, a new technology provider. Just of interest. Can you put your hand up if you're a developer? Not if you're on the panel. That doesn't count. So there's four, five. And if you're an NGO? That was why I wanted to ask that.

MR. FURDYNA: Mr. Brown Kinloch?

MR. BROWN KINLOCH: Thank you. It's David Brown Kinloch with Appalachian Hydro and Shaker Landing Hydro.

And I would also like to reflect the -- like the panel and gratitude for the Commission having this hearing. This is incredibly important what you're looking at here.

And the reason I say that is, and I've been in this business way too long, but years ago, when there was a problem that came up with issues not being able to dealt with with the traditional licensing process, there really wasn't a way to resolve a lot of things. You all put together the integrated licensing process, which was a major development. And as I see that, that is a way that problems were solved for complex large projects that had a lot of issues.

But now I think it's time that we turn our attention to the other extreme, to the small projects, the projects that don't have any issues. The projects that should be almost common sense.

We need to have -- we also need to have a process for those projects, the ones that can be done quickly. And I say quickly, because these resource agencies are spending too much of their time dealing with a lot of things that probably they don't have the time to deal with. So if the -- if you can come up with a process to deal with those projects on that other extreme, the ones that are simple, the ones that are small, the ones that don't have issues, that would be a real development. That would be a real

development as far as licensing and getting new hydro out there. Thank you.

MR. HANSEN: Thank you. Any other questions or comment from the audience on this question? All right, that appears to be all on that one. Dustin, do we have any questions or comments on the final question from any of the phone participants?

MR. HAHN: I'm showing no questions at this time.

MR. HANSEN: Thank you, sir. So now is the last chance to dance, I guess. If you have any further comments or questions about anything we have talked about today, now is the time to bring those up. So this is open for anyone on either panel for the audience, for the phone numbers, anyone. So I will first go to either of the panel. Does anyone have any final comments they would like to make? Thank you. And the audience, any wrap up? Mr. Brown Kinloch?

MR. BROWN KINLOCH: Sorry.

MR. HANSEN: No, please.

MR. BROWN KINLOCH: I just have one final question for the Commission as whether this process of looking at the two year process is over until something else happens or are you looking for more projects, looking to do additional pilot programs along the way? And I just want to mention, if you are, I've got a perfect project for you. So

you just let me know. We're ready to go.

MR. HANSEN: I would be happy to try that, but I think I'll defer to Mr. Yearick.

MR. YEARICK: Vince Yearick, hydropower licensing. Well, the next step for this process is for us to submit this report to Congress with our recommendations. We're not soliciting additional two year pilots at this time, but I think as you have heard from some of the folks on the panels, they should have gotten that indication. If you have a project that you think can be expedited, it can be expedited under the current regs. So I would leave that one to you.

MR. HANSEN: Thank you. Any other final comments from the audience? Any final comments from anyone on the phone, Dustin?

MR. HAHN: I'm showing no questions at this time.

MR. HANSEN: Great. Well, I'd like to thank all of our panelists for the first and second panel for joining us today. And if you don't mind, I'd like to take a quick moment and give a round of applause, because I think they did a fantastic job.

(applause)

And I'm going to turn this back to Tim for a couple of closing comments.

MR. FURDYNA: Thanks, Ryan. Thank you again to

everyone for participating in the workshop today. I believe the input we received is very informative and will help us in assessing the effectiveness of the two year pilot licensing process and the practicability of implementing a two year process on a more programmatic scale.

As specified in our notice issued on January 30th, written comments are due by April 14th, 2017. Guidance on how to file written comments is provided in that notice. In addition, you may submit your written comments today to the court reporter in the back of the room. A transcript of this meeting will be made available under the docket for this proceeding, which again, is AD-13-9-000. All right.

MR. HANSEN: Thank you, again, everyone. Our workshop is now adjourned.

(Whereupon at 4:28 p.m., the meeting was adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceeding before the FEDERAL ENERGY REGULATORY COMMISSION in the Matter of:

Name of Proceeding: Hydropower Regulatory Efficiency Act of 2003

Docket No.: AD13-9-000

Place: Washington, DC

Date: Thursday, March 30, 2017

were held as herein appears, and that this is the original transcript thereof for the file of the Federal Energy Regulatory Commission, and is a full correct transcription of the proceedings.

Larry Flowers

Official Reporter