

INTEGRATED LICENSING PROCESS EFFECTIVENESS EVALUATION FEEDBACK

**SUMMARY OF COMMENTS PROVIDED DURING
PARTICIPANT INTERVIEWS, MULTI-SECTOR
TELECONFERENCES, AND REGIONAL OUTREACH MEETINGS**



FEBURARY 2006

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Introduction

When the Commission adopted the Integrated Licensing Process (ILP) on July 23, 2003, it committed to studying the effectiveness of the process in achieving reductions in processing time and cost. In conjunction with that effort, the Commission engaged federal and state agencies, Indian tribes, licensees, non-governmental organizations (NGOs), and members of the public involved in the first seven relicensing cases (“pioneer projects”)¹ using the ILP in probing interviews, by-sector dialogues, regional workshops, and a technical conference during the spring and early summer of 2005. The purpose of this effort was to solicit ideas, tools, and techniques that were being implemented (or could be implemented) to achieve the goals of the ILP within the framework of the existing regulations. Because the seven projects are in various stages of the ILP, discussions were limited to ILP steps leading up to the study plan determination made by the Director of FERC’s Office of Energy Projects, which include ILP preparation, Pre-Application Document (PAD) Development, Scoping, and Study Plan Development.

The following chapters contain a summary of comments provided during the interviews, teleconferences, and regional workshops.² They include comments from a variety of people with differing views in the best way to implement the ILP. We have provided these summaries so that all ILP participants can see the breadth of thoughts provided on the ILP. While the comments do not necessarily reflect what is required by the regulations, they may be helpful in determining how to implement and participate in the ILP. We want to emphasize, however, the flexibility of the ILP to all projects. What worked in one case may not be the best idea for another. Based on the comments provided during the effectiveness evaluation, Commission staff prepared a guidance document that contains ideas that may help improve participant involvement and process outcome without extending the timeline of the process or broadening the regulations. Those ideas are contained in “Ideas for Implementing and Participating in the Integrated Licensing Process (ILP).” No attribution for a comment is provided in the summary.

¹ These following seven projects are referred to as the pioneer projects because they opted to use the ILP during the transition period before it became the default licensing process: DeSabra-Centerville - FERC No. 803; Canaan – FERC No. 7528; Morgan Falls – FERC No. 2237; Mystic Lake – FERC No. 2301; Packwood Lake - FERC No. 2244; Smith Mountain Lake - FERC No. 2210; and Tacoma-Ames – FERC No. 400 .

² Transcripts of the ILP Effectiveness Technical Conference can be found on the Commission’s web page at www.ferc.gov or on eLibrary under docket AD05-6.

Chapter 1

Stakeholder Interviews

A total of 60 interviews across all sectors (applicants, agencies/tribes and non-government organization representatives) from the seven ILP pioneer projects were conducted between April and June 2005. Interview results vary based on project size, level of collaboration, location, past experiences, and other variables. The individual telephone interviews encouraged participants to provide as much feedback as possible. Dialogue tended to be informal and allowed participants to describe their overall experiences. Participants provided background information, recommendations, approaches that were successful in implementation and lessons learned.

Key comments for each step in the process (ILP Preparation, PAD Development, Scoping, and Study Requests and Study Plan Development) are summarized first. This is followed by specific comments attributed to each sector. Comments regarding FERC's role in the ILP and general thoughts about the ILP were also solicited.

Some Key Findings from the Interviews:

- FERC's presence in the ILP was effective and provided guidance to all stakeholders.
- Many participants believe that the ILP process is most effective if all of the stakeholders collaborate throughout the entire process.
- Outreach and training sessions were particularly helpful to stakeholders who are not familiar with relicensings.
- Participants suggested starting outreach efforts early in order to overcome the tight timelines at the beginning of the ILP and to involve as many interested parties as possible.
- A robust PAD should include any issues raised by stakeholders and should include a Communications Protocol.
- Many benefited from preparing for scoping meetings by reading the PAD and conducting research before attending.
- Stakeholders found the seven study criteria to be straightforward and useful, although the project nexus and cost criteria were challenging.
- Participants voiced their confusion over the level of detail a study plan should include in the PAD.
- Tools, such as templates created by the applicant, facilitate the study request phase for stakeholders, as they dissect the criteria.
- Overall, participants believe the ILP is an improved process in comparison to the ALP and TLP.
- Stakeholder recommendations included using resources such as FERC's eLibrary, previously filed PADs, and interagency mentors for background research.
- Although the participants felt that the evaluation was useful, the pioneers have not been through the entire process and requested a re-evaluation in two to three years.

ILP Preparation

In order to prepare for the ILP, most participants took advantage of opportunities to educate themselves on the process, particularly those who had never been involved in a hydro relicensing. Participants found FERC trainings to be most helpful in familiarizing themselves with the ILP. The FERC eLibrary and FERC's process documents (such as the ILP flow-chart) are also helpful as the process moves along. Additionally, training and outreach sessions held by the applicant or the applicant's consultants provided a thorough overview of the process and introduced project specifics. Many agency personnel benefited from inter-agency trainings and less formal conversations with experienced staff members who understood the demands of relicensings and the similarities and differences between the Alternative Licensing Process (ALP), Traditional Licensing Process (TLP), and ILP. Similarly, NGOs and private citizens learned about the process from trainings conducted by more experienced NGOs.

Despite all of the organized opportunities for education on the ILP, several respondents noted that they felt unprepared as the process began. In these situations, FERC's presence at the project meetings provided the additional guidance necessary. Nearly all ILP participants both prepared and unprepared, noted that questions inevitably arise in each step of the process. Addressing these questions as they emerge will help to clarify the process and regulations for future ILP participants. Participants also suggested distributing a pre-ILP guidebook, outlining responsibilities of each party and the guidelines of each step of the process in laymen's terms.

The strict time frame of the ILP was an initial concern shared by many respondents. The ILP "starts off with a bang," and encouraging involvement as early as possible helps everyone get a few steps ahead of the process so that it begins more efficiently. This may require the applicant to conduct early outreach. All sectors noted that working with other stakeholders in previous relicensings facilitated the early steps of the ILP. However, where those relationships did not already exist, the fast pace of the ILP does not provide much of an opportunity for parties to naturally build relationships with one another; therefore each organization must be active in establishing its own partnerships for information sharing.

Early consultation efforts have varied with the size and scope of each pioneer project. Where communication and outreach began prior to the Notice of Intent and drafting the Pre-Application Document, participants expressed greater satisfaction in the process and less anxiety about the tight timeframes. Most participants felt that it is the applicant's responsibility to distribute information about the process and initiate discussions with stakeholders. Applicants and stakeholders recommend doing so through individual consultations and early outreach meetings to explain the ILP process and the project specifications. Most participants felt that hired consultants have been helpful in facilitating communications and identifying roles early in the process. To further communication efforts, stakeholders suggest the development of a user-friendly

website with any preliminary project information and a list of issues and interested parties. The pioneer projects that have used Communications Protocols have found them to be useful, and participants in projects without guidelines for communication have suggested implementing them.

Additional Feedback on ILP Preparation by Sector

Applicants

- Work prior to the PAD is crucial in establishing relationships with stakeholders and understanding the ILP.
- It is an advantage for applicants to have worked with stakeholders on previous relicensings. If this is the case, everyone is adjusting to the ILP rules with the same agency partners. However, even well-established relationships require continuous outreach and communication.
 - Establish a relationship with a FERC coordinator early in the process.
 - Conduct advanced consultation with agencies.
 - Meet with stakeholders to provide more information and understand the many issues.
- Tighter deadlines imbedded in the Process Plan define the process.
- Use information from the previous license to prepare the PAD.
- PADs from other proceedings may provide ideas on how to structure the PAD and the types of information that may be included in the PAD.
- The challenge is to engage stakeholders in such a way that allows all participants to gather the necessary information in the allotted timeframes.
- Interested stakeholders need to come to these meetings prepared by conducting background research and expecting less handholding.

Agencies and Tribes

- Many were pleased with the amount of outreach that applicants conducted.
- The process seems to be going well for agencies that are new to relicensings.
- Communications protocols were helpful when developed early in the process.
- A site visit was helpful in understanding the issues and project layout.
- It is helpful to have FERC stepping in to clarify questions. Several agencies noted that FERC seems accessible and open to questions.
- Applicants and consultants seem to be taking a genuine interest in getting everyone on board who wants to participate.
- Receptive and thorough applicants are capable of running a smooth process. State agencies felt that trust in the applicant is essential for the ILP. Some actions that can help build that trust include:
 - Starting discussions about the issues before the process formally starts. This helps establish relationships and facilitate the subsequent steps of the process.
 - Preparing stakeholders and agency representatives for the tight deadlines.
 - Communicating up front by putting all of the information on the Internet.

- Stakeholders worked well together and communicated clearly during their preparation for the ILP. Several agencies contacted additional known stakeholders to encourage their involvement in the process.
- The state of tribal relations is uncertain under the new rule.
 - Several agency employees noted the absence of tribes in the process.
 - Exchanging information in the early stages with tribes can be beneficial.
 - Tribal members feel quite a bit of pressure with the new process.
 - One tribal member felt that he is still doing catch up on understanding the ILP.
 - One tribal member has to rely on the state agencies to represent his interests and the agencies now have months to do things where before they had years.
- Daytime meetings often conflict with the schedules of stakeholder groups who would otherwise be attending regularly. There is often a small group of private citizens who cannot attend but are interested.
 - Some federal agencies are not as involved as other participants think they should be.
 - Some agencies cannot attend all of the meetings in the initial 90 day period and are worried that agreements will be reached among parties that are present.
 - Without deadline extensions, some agencies feel that the quality of their work will be marginal.
 - Some federal agencies had budget cuts and feel like they have less time to spend on these projects.
- Having a facilitator assist the agencies allows for more freedom of discussion, and helps to unite stakeholders with similar issues.
- Some clarification is needed in terms of how engaged representatives from different agencies should be in the different stages of the process.
- There is a wide divergence in the approach of the various applicants in managing their process and engaging stakeholders. FERC could take a more active role in evaluating the relationship of each applicant with the involved stakeholders, and where needed, ensure that stakeholders are being engaged and their concerns about the process are being addressed.
- Relying on the applicant to prepare for the entire ILP process is not efficient. Hiring contractors can help.
- Being responsible for 401 Certification makes it difficult to keep up.
 - State rules don't always conform to federal rules, so the timelines are different.
 - 401 Certification has to have completed environmental documents before the certification can be processed. Because these environmental documents are issued long after the request for certification, the water quality certificate may not be issued in as timely a fashion as desired in the ILP.

NGOs

- Participants appreciate applicant efforts to involve as many stakeholders in the process and felt that in some cases, the applicant has gone beyond the minimum requirements.
- FERC representatives brought NGO stakeholders up to speed very quickly, when everyone was new to the process. Being new to the process makes participants feel that they are barely keeping up.
- Private stakeholders representing themselves or small interest groups have been helped by agency personnel who provide guidance, technical expertise, and help them realize what is expected of them in this process.
- Active NGO participants are willing to post information to their websites and distribute information on behalf of the applicant in order to reach all interested parties.
- The process is most effective when participants feel included.
- To help stakeholders feel more included in the process, they would like to comment on meeting agendas and arrangements.
- Some stakeholders are unsure of what is appropriate to ask during meetings and would benefit from FERC's clarification.
- In the past, some applicants have funded environmental groups so that they could hire consultants to assist their participation during the licensing process.

PAD Development

Respondents emphasized the importance of interaction during discussions of PAD development. All sectors recommended having everyone at the table during the pre-PAD meetings, as that provides opportunity to review the details of the process and the project, as well as the purpose of the PAD. The majority of participants noted their appreciation of FERC's expertise and guidance during this initial phase, though some noted that the Commission could do more to encourage the applicant to engage stakeholders. Due to the level of communication and effort needed during this phase of the process, applicants recommend allowing at least a year to develop the PAD, though it may vary with the scope of issues in each project.

Communication becomes even more imperative when participants begin collecting information for the PAD. All sectors agree that applicants must know how to ask the right questions as they request information for the PAD. In doing so, they will be more able to rely on agencies and NGOs for critical data. Several participants noted that outreach meetings are most effective if they occur in a series, discussing single subjects at each meeting. One applicant stated "outreach meetings will help in getting all stakeholders on board with the PAD. If the applicant doesn't do it, trust relationships will be weaker." Communication between stakeholders is also important, as their discussions with one another are likely to result in refining issues, information needs, and sources of information.

A robust PAD should acknowledge all of the concerns raised by stakeholders, even if information was not entirely provided. Stakeholders suggested that applicants support any conclusions that are drawn in the PAD. As mentioned, many participants suggested the inclusion of a collaboratively-drafted Communications Protocol.

An important component of the PAD is the process plan, which creates a framework for all project tasks and deadlines as well as permit needs of other agencies. In order to coordinate the ILP with other formal processes, such as water quality certification or Endangered Species Act (ESA) consultation, agencies and stakeholders feel that they should be involved in the determination of ILP timelines. Once established, participants suggested posting a somewhat-flexible Process Plan on the project website.

Additional Feedback on PAD Development by Sector

Applicants

- Applicants seeking information from agencies should be cognizant the agency representative's schedule and other work demands when setting dates for providing requested information.
- The PAD development went well by taking advantage of abundant and existing information to create a comprehensive initial relicensing document.
- PADs organized similar to an applicant-prepared EA seemed to please all parties.
- Applicants appreciated FERC reviews of draft PADs before they were issued.
- Due to the PAD, applicants felt that the level of understanding among participants is greatly enhanced.
- Most applicants felt that their PADs met the needs for information and were constructed with feedback from all stakeholders.
- Some thought there could have been better communication during the pre-PAD meetings but that's a challenge, given the tight time frame.
- A few applicants agreed that it would be helpful to include detailed study plans in the PAD.
- It can be a challenge to collect all of the "existing, relevant, and reasonably available information" for the PAD.
 - The applicants identified all of the information at the time of the PAD development, but were prepared that new information would likely surface during the next steps.
- Applicants feel that there is some ambiguity in the regulations regarding the intended structure of the PAD. The regulations are written as if issues, impacts, information needs, etc are to be discussed in each resource areas. It would be more useful to group them by topic.

Agencies and Tribes

- Collecting and gathering the information for the PAD seems to throw a lot of the work load on outside entities, rather than the applicant, to provide the information.

- Most of the key issues known during PAD development were included in the PAD, but agency representatives noted that as they work through the process, new issues surface. At that point, issues should be formally recognized during scoping.
- FERC has been willing to provide balance and is open to questions.
- Applicant has been willing to provide balance and listen to everyone.
 - The applicant reached out before the PAD was submitted to let stakeholders know that it was coming.
 - Some applicants are handling things well by providing notification and distributing the necessary information.
 - The applicant provided everything that was necessary to understand the operation of that project and the issues involved in relicensing.
 - The PAD had a lot of information. The applicant did a good job identifying issues.
- Agencies have two weeks to provide all information for the PAD. An important consideration is whether or not the agency has enough staff to get the information ready in time.
- Cultural concerns:
 - The applicant should look to local universities and the State Historic Preservation Office (SHPO) for guidance in advance of preparing the PAD.
 - The applicant should have a full-time archaeologist on staff to write the PAD.
- Agencies should not assume that the applicant has all available information.
- The PAD should include:
 - A candid description of project effects.
 - A good description of project operations and operational limitations of the project.
 - Study plan details.
 - Information about recreational access for the disabled.
- The regulations allow an applicant to cite to the sources of information used to prepare the PAD. Some agencies request that the actual information or, at least summaries of the information cited, be made available in the PAD. This would help participants that are unable to access certain studies.
- Quality PADs occasionally come at the cost of taking additional time than is predicted and allowed.
- The applicant should provide information to back up any conclusions.

NGOs

- An applicant's use of teleconferences and emails to correct errors in the PAD was easy and effective.
- Stakeholders appreciated revised versions of the PAD because they included critical information.
- Pre-PAD meetings could have been more on-point had the applicant sat down with all the stakeholders who they knew they'd be working with.
- The recourse for inadequate studies is unknown.

- A PAD should include:
 - A description of all documented historic and tribal sites. Gaps, inaccuracies and errors in this information would be prevented by contacting tribes and the State Historic Preservation Officer (SHPO).
 - Detailed study plans.
 - Historical information and previous license agreements.
 - Information regarding significant occurrences in the system (i.e. significant fish kills).
 - Clear definitions and language (for example, clearly stating how and to whom to address comments to the PAD).
 - A clear description of the process. It took a long time to understand the flow of the process.

- In order to develop a comprehensive PAD, stakeholders and agencies should review the PAD together.

Scoping

Respondents, particularly agencies, tribes, NGOs, and private citizens, had different expectations of the scoping meetings and prepared themselves accordingly. While some stakeholders arrived at the scoping meetings to learn about the projects and see the PAD for the first time, others went to meetings prepared with comments regarding information gaps in the document or with supplemental information that had not been incorporated. Ideally, scoping meetings are an opportunity for stakeholders to address a small amount of issues that had not been adequately captured in the PAD. However, FERC must have a flexible meeting schedule that allows questions and concerns to be addressed. Participants from all sectors noted the importance of effectively noticing the scoping meetings.

To accommodate the broad spectrum of knowledge and preparation for scoping meetings, stakeholders suggested that FERC conduct multiple meetings that provide both an overview of the project and opportunities for everyone to make their comments. All participants noted the importance of involving the public during scoping and suggested day and evening meetings in different locations. Different formats were used for scoping meetings, and while some participants felt that the roundtable discussions were most helpful, others appreciated public meetings with substantial time for questions and answers. Many stakeholders recommended the formation of resource committees during this phase, as they spent quite a bit of time confirming that their resource concerns had been acknowledged and were beginning to formulate ideas for study requests.

Additional Feedback on Scoping by Sector

Applicants

- Significant scoping prior to the PAD will assist with the formal scoping period.

- The PAD supplemented scoping in that it helped participants identify issues and understand the project.
- Applicants acknowledge that more personal interaction (particularly for study plan meetings) would be helpful but are sometimes stretched for time.
- Some applicants feel that they did everything they could do to increase public involvement.
- FERC's role and responsibilities:
 - Encourage scoping meeting attendees to be interactive.
 - Place a certain level of emphasis on the defined purposes of scoping and the need for stakeholders to participate in scoping rather than focus on study requests.
 - Acknowledge where sufficient information exists to conduct the NEPA analysis and clearly state what the issues are and are not. Be clear about where the information is available, and what information is needed.
- Many agencies chose not to participate because they felt that most of the issues had been identified in advance of scoping.
- Scoping Document 1 should include as much detail as possible.

Agencies and Tribes

- Scoping helped the agency get a better sense of what studies were ongoing and gave agencies an additional opportunity to connect with one another.
- Tribes, in particular, appreciated the additional opportunity for involvement. Some tribal contacts felt another very general overview of the process would have been beneficial during scoping.
- Scoping meetings were sufficiently interactive in smaller projects where stakeholders were familiar with one another.
- Provide contact information of all parties, to help participants understand each person's responsibility during the relicensing process.
- Weak public participation
 - FERC and/or applicants should send letters to local governments informing them of upcoming meetings and include a description of the reasons why they would benefit from attending.
 - At times, agency representatives felt it necessary to contact public stakeholders or NGOs to notify them of upcoming discussions in which they should be involved.
 - Some agency representatives expressed concern over making statements during the meetings because their thoughts are not yet refined. Therefore, the agency representatives prefer to submit written comments rather than make statements in meetings. Additionally, many agency representatives didn't attend the scoping meeting because they were bogged down in study requests and PAD comments.
- Applicants should heed issues raised during scoping and attempt to understand stakeholder concerns and fully address them in proposed study plans.
- Agencies are uncertain of whether or not they are supposed to prepare a formal statement for the scoping meeting.

- Agencies were disappointed if recommended changes to SD1 did not lead to a SD2.

NGOs

- Though it is awkward to be commenting on the PAD and the scoping document at the same time, licensing and NEPA processes simultaneous makes sense.
- The early FERC decision of which type of environmental document (Environmental Assessment or Environmental Impact Statement) they'll use is a concern for NGOs who feel that it is too early to make this determination.
- The problem with early scoping is that most stakeholders have only been engaged for a few months. If new issues come up as a result of the studies, they are concerned there is no opportunity to bring them into the record.
- Stakeholders unable to make part of the scoping meetings missed important information. Adequately explain what will be going in each portion of the meeting in an agenda for participants who cannot participate entirely.
 - Meeting topics should focus on one or two relevant issues in an effort to keep participants interested and focused.
 - More people would have attended the scoping meeting if it had been in a better location.
 - It would be helpful if the FERC contact would help prepare participants by describing the objectives and format of the meeting.
- FERC should think about the way they talk about the issues and make sure all of their communications aren't creating a biased outcome.
- Some NGO representatives felt that the applicant dictated what to do and what to look at in a lecture format. They wanted greater opportunity to identify and discuss additional issues.
- Benefits and possible impacts of the project were not provided and there was no opportunity for interaction. There needs to be a space to consider input from other parties.
- Comments at scoping meetings should be addressed.
- Follow-up meeting opportunities would be helpful for NGOs and private stakeholders to see that their comments and concerns are being addressed.

Study Requests & Study Plan Development

In general, participants from all three sectors found the seven criteria to be straightforward and useful. Nearly everyone felt that the measures helped participants clearly justify the requested and planned studies within the scope of the project. The criteria "provide a framework to propose and conduct studies," and eliminate studies for which the only justification is "because." While some stakeholders were challenged by specific criteria, particularly cost effectiveness, the criteria hold everyone accountable for finding the most necessary and cost-effective studies.

Quite a bit of concern lies around the question of who should be first to provide detailed study information and how much of this should be included in the PAD. Stakeholders

feel a tremendous amount of pressure within the 30-day period of providing comments to the PAD, scoping, and developing study requests that adhere to the seven criteria. They felt that the responsibility to provide methodology for some of the studies should rest on the applicants, and would be most helpful in the PAD. In some projects, stakeholders felt that the applicant went above and beyond the process requirements by being proactive in working out differences. Some suggested that the applicant provide detailed study plans upon request from the agencies and NGOs. Templates created by the applicant also assist the study request phase for stakeholders, as they dissect the criteria. Stakeholders also appreciated the applicant's response to feedback through a revised study plan.

Additional Feedback on Study Requests and Study Plan Development by Sector

Applicants

- Issues need to be scoped well before the study requests are filed.
- Timing is an issue. By building extra time into the Study Plan Schedule, the applicant can allow for flexibility in conducting studies during peak seasons.
- Criteria help identify information gaps that are needed in order to push a study forward.
- The stakeholders provided sufficient information and comment to the Study Plan under tight deadlines.
- Applicants found that stakeholders wanted the applicant to design the studies for their review and comment.
- Applicants advise having fully developed study plans available should stakeholders want to see the responsibility shifted to the licensee.
- Applicants feel conflicted about the amount of study detail to include in the PAD. Providing more detail may create the impression that they are prejudging the outcome, while providing little detail puts more pressure on stakeholders to interpret the plans and add substance to the study plan.
- Applicants strongly encouraged FERC to continue to emphasize the importance of stakeholders coming to study plan meeting prepared to discuss differences in study approaches.
- Applicants encouraged agencies to carefully weigh the need for studies with the size of the project.
- In the FERC guidelines, the criteria refer back to another section. This is burdensome and the guideline information should be inserted everywhere applicable instead of referenced.
- Applicants expressed concern that by declining to conduct a study that was not well developed could set an adversarial tone very early in the proceeding, hampering future discussions and working relationships.

Agencies and Tribes

- Consultants and the applicants' biologists assisted in the development of study requests by adhering to the seven criteria.

- The criteria helped agencies think of the things that FERC would need to consider in approving a study plan.
- Considering the seven criteria was labor intensive for agencies; many had to rely on others to provide a lot of information.
- Coordination among agencies to address comprehensive resource concerns is helpful.
- Agencies felt that the study plan helps to keep the process on track and informs every one of their roles.
- In order to raise an issue that needs supporting data, agencies have to take the time to go through the seven criteria and ensure that all concerns are clearly communicated. When time is running out to prepare study requests, agencies may be forced to prioritize studies, giving less attention to detail in the study requests.
- There is more coordination between agencies in the study request phase than before.
- The language from Section 5.11 B1 has left the burden of providing the detailed methodology and description in the applicant's Proposed Study Plan on the agencies.
 - Agencies prefer an increased level of detail in the applicant's plan.
 - The study plan did not have enough detail for the agency to evaluate. Agencies don't feel that they should be responsible for developing studies from minimal detail in the study plan.
- The concept of front-loading the data collection puts agencies in a difficult position in negotiating options for analysis.
- Allowance of a placeholder study plan would be helpful because agencies often don't know what they need in terms of studies until they have conducted another study. If something comes out of initial data under review, it would be nice to be assured of further study if necessary. Additionally, it would be easier to come back into the study plan part of the process rather than going back through the requesting phase and justifying the necessity of the studies.
- The process has limited flexibility due to its adherence to and the artificial and pre-determined deadlines that limit studies.
- Some agency representatives do expect to get closure on study results sooner. In a few cases where agreement is difficult, the applicant will have to move forward with something that hasn't been agreed upon. At the same time, they must account for the risk if there's a proposed change by the applicant in the proposal.
- Due to the time crunch, agencies had to think of the most important thing to ask for and had to let some of the smaller issues slide.

NGOs

- Study Plans should be presented up front at study plan workshops.
- A guidance document or model to go along with the criteria was and will continue to be helpful.
- Obtaining study requests early in the process makes sense, but the time given to develop methodology is too short.

- Public stakeholders didn't feel adequately knowledgeable to address all seven criteria. Additionally requesting studies is too much of an undertaking for public stakeholders without money for consultants.
- Many NGOs expressed concern that once the Study Plan is set in stone, the opportunity closes and changes in the study plan will occur "only under extreme circumstances."
- The process should encourage stakeholders to work with the applicant to develop study requests to get to the level of detail necessary.
- Agendas for study plan meetings should be set far in advance and should be open to changes by all parties.
- FERC came out with scoping document two the same day the applicant came out with proposed study plans. That is problematic and there needs to be more time in between documents. The group can think they are going one way and then FERC comes back with a suggestion for another path that influences already developed study plans.

FERC's role in the ILP

Respondents used a number of terms and expressions to describe their expectations of FERC. These included: *referee, driver, leader, guide, advisor, process police, protector of public interest, mediator, interpreter, facilitator, and gut-checker*. Stakeholders expected FERC to take a leadership role to help educate stakeholders and define the nexus of the project. Once the process gains momentum, all sectors look to the Commission to provide oversight and checks and balances between parties. Many ILP participants noted the need for FERC to use its authority to ensure that various stakeholder groups are working collaboratively and openly. Conversely, someone noted that FERC should do more to drive home the fact that the ILP is not a collaborative.

In general, respondents feel that the increased FERC support is beneficial to hydro relicensing, though concern exists that this level of involvement will diminish once the ILP is more firmly underway.

Based on the varying perceptions of FERC's role in the ILP, it seems that the Commission would benefit from more clearly defining its responsibilities. Some respondents cited confusion of roles between FERC and the applicant as the process manager. Thus, participants are unclear of the separation of roles between applicants and the Commission. There is also a common perception that FERC is too closely affiliated with the applicant. To placate these concerns, stakeholders suggested that the Commission reaffirms its neutrality and begins to respond more promptly and consistently to all stakeholder concerns.

Additional Feedback on FERC Involvement

- FERC's authority and neutrality is necessary to the process. While contractors are helpful, it is better for stakeholders to hear clarifications to the rule straight from FERC.
- Interactions with FERC staff have helped to build relationships and trust. FERC's personal appearance at scoping meeting locations is appreciated by all parties.
- Participants noted FERC's responsibility of sending information to various agency employees regarding consultations with State Historic Preservation Offices (SHPO).
- FERC should not convey in advance whether any issues are or are not important.
- FERC should find some way to get around the ex parte rules
- Some stakeholders have been reluctant to contact FERC staff because they don't want anyone to perceive the interaction as "tampering" with the process.

General thoughts on the ILP

The most commonly noted difference between the ILP and the previously used licensing processes was the tightened timeframe. Most participants appreciate the momentum of the process, as it is more structured and deadlines are more clearly defined. FERC's increased involvement is evident in their enforcement of the structured process, which many attributed to the new rule. While the process is nothing short of efficient, it is also stressful for most participants who are concerned that five years is not enough time for a complex relicensing. Many participants referenced sacrifices they would have to make in order to meet deadlines, including their ability to attend meetings, receive financial reimbursement, or provide adequate detail in comments and study requests.

Respondents noted a general improvement in atmosphere, with one person stating that "starting on a friendly, collaborative note is refreshing and is helped when everyone at the table is clear on one another's roles and perspectives." The majority of respondents felt that everyone who should be in the process has at least been contacted and made aware of their opportunities to provide input. Several stakeholders noted that there comes a point where it is only that individual's responsibility to participate fully. One NGO representative noted that there may not need to be great strides in public participation as long as the process remains open.

Conversely, however, some participants expressed concerns that the enormous commitment of time and energy is a barrier to increased public participation. Several people noted that the ILP is less collaborative in nature, though the level of collaboration is largely dependent on applicant efforts outside of the regulations. One common suggestion was to provide grants to help fund stakeholders who cannot otherwise afford to participate in relicensing meetings. In situations of distrust between the applicant and other stakeholders, some suggested providing an opportunity for the public to meet with agencies and FERC without the licensee present. It would be reassuring for the public to hear the agencies explain their authorities and how they can work with the public.

Chapter 2

By-Sector Teleconferences

Three by-sector (Non-governmental Agencies [NGO]; agencies and tribes; and applicants) WebEx teleconferences were conducted on May 10, 11, and 12, 2005, to further probe for comments on the ILP steps, FERC roles, and general thoughts about the ILP. The intent of the by-sector conferences was to encourage more open discussions by engaging common participants from different proceedings. The following are summaries of those comments.

NGO Teleconference: Tuesday, May 10, 2005

ILP Preparation

- The level of preparedness among NGOs depended greatly on the applicants' efforts to engage stakeholders prior to the Notice of Intent (NOI) and Pre-Application Document (PAD), and the amount of information initially available to each organization.
- Participants who were involved in the drafting of the ILP Final Rule felt prepared for the commencement of the process.
- Less knowledgeable participants felt that FERC and applicant sponsored trainings were extremely helpful in laying out the process and informing them of all requirements and deadlines. Even after extensive training, however, each step of the process is still unpredictable for those with minimal relicensing experience.
- NGOs contacted as many potential stakeholders as possible to explain the details of the ILP. This should be a responsibility shared with the applicant. A great deal of effort is required for local stakeholders to keep up with and ahead of the process.
- Familiarization with formal documents relevant to the proceeding, such as the PAD and Initial Scoping Document (SD1), helps participants who join the project late.
- Forming relationships with other stakeholders and the applicant before filing the PAD helps everyone define roles, predict issues, and optimize communication.

PAD Development

- Collaboration with other NGOs involved in other relicensing proceedings provided supplemental background on the ILP and information for the PAD.
- The process gives the applicants a great deal of control. Any extra steps to open communication lines and include stakeholders in each stage are welcomed and will facilitate a smoother process.
- Applicants should strive to run the process openly, beginning with development of the PAD. Consultations between the applicant and stakeholders before the PAD appeared to be most helpful. They reduced pressure on small agencies and organizations to react to situations with feedback or information in a short time frame.
- Survey tools are helpful in identifying information sources, but are not an adequate substitute for open meetings and one-on-one consultations. It would benefit the entire project for the applicant to use as much detail as possible when requesting information for the PAD.
- A draft PAD would be helpful to work from when identifying information and would lead to a more comprehensive document.
- When there is insufficient consultation between the applicant and all stakeholders, FERC could more actively facilitate and encourage collaboration and openness of the applicant.

- Historical information of the basin qualifies as existing, relevant, and reasonably available information, and therefore should be included in the PAD.
- Participants joining the project without knowledge of the system or the project impacts would benefit from learning about any historical issues or problems at the project early in the process.
- Information that was left out up front inhibits the ability to identify issues, and the consequences percolate to other steps of the process. The lack of relevant information in the PAD should be grounds for FERC rejection.

PAD and Process Plan

- The PAD is beneficial to the relicensing process, but weak PADs can complicate the process and harm the relationships between project participants.
- A useful and navigable PAD uses simple, descriptive language and defined terms, rather than complicated technical information.
- While some stakeholders prefer to read printed copies, searchable online documents are an effective way of distributing the PAD to the public.
- Detailed study plans that include methodology and cost information should be included in the PAD.
- Stakeholders would like to see observations in the PAD, rather than unsupported conclusions. Conclusive statements require the stakeholders to question their accuracy and look for supporting documents, starting the process off with a defensive tone.
- Stakeholders lose trust in the applicant if they feel that an applicant has not disclosed any potential changes to the project in the PAD.
- It is important for everyone involved to see that the applicant is listening in good faith and is responding to questions and requests from all parties. Communications Protocols were cited as useful tools in the ILP so much so that stakeholders thought FERC should require them.
- Several participants felt that they did not get a chance to contribute to the development of the process plan even though they wanted to provide input and asked for it several times. They would like FERC to encourage greater communication between the applicant and stakeholders.
- Those who were involved in the development of the Process Plan found it useful in identifying significant milestones, but emphasized the need to stick to it and keep everyone informed of any changes in dates or deadlines as they occur.
- The Process Plan was useful when participants agreed to speed up the process in one phase in order to begin studies during the first field season.
- When stakeholders were driven by other issues, such as ESA issues, having outside pressure to meet deadlines facilitated study completion to better coordinate processes.

Scoping

- Stakeholders varied in their preparation for FERC scoping meetings. Lack of preparation was attributed partially to FERC and the applicant for not providing enough information about the ILP and the specific project prior to the meetings. Stakeholders also felt unaware of the implications of the scoping meetings, and suggested that FERC clarify those implications in the future.
- When minimal information was provided prior to the meetings and the stakeholders did not know what the implications of the meetings would be, the discussion was not as open or valuable.

- Meetings with more available information in the PAD were effective in getting the stakeholders to address issues that were not captured in the PAD and were a good opportunity to assign groups to work on those issues.
- Participants agreed that maximum participation from FERC staff was beneficial to the meetings.
- Multiple convenient locations (both for agencies and NGOs) and different meeting times encourage more public participation and will reinforce public involvement.
- Scoping meetings should allow sufficient time for an overview of the ILP *and* for meeting participants to share their comments.

Study Requests

- The seven criteria were useful in developing study requests.
- The most common concern with the study request process was the lack of detail in the preliminary list of studies and the amount of work required of stakeholders to design studies based on a blank slate.
- Some participants felt that the criteria related to the project nexus was left too open for interpretation and that some applicants repeatedly failed to mention the project nexus on a number of plans.
- Stakeholders were not confident in their expertise to justify or provide sufficient detail in their own study requests, particularly regarding costs of specific studies when the details and methodology were lacking in the PAD.
- Concerns surround the potential failure of local stakeholders without mandatory conditioning authority to meet the seven criteria. Many private citizens who lack relicensing experience or ecological knowledge feel that their level of understanding is too basic to create a supported study request. Feedback and consultation with the applicant and agencies would help them draft study requests that meet the seven criteria and are more likely to be approved by FERC.

Study Plan

- Some participants felt that the proposed and final study plans were deficient in outlining how studies would be conducted and who the consultants would be. In these situations, stakeholders did not feel that the applicant was open to discuss the gaps in the document.
- An NGO representative recommended that FERC be careful to remain neutral in study plan discussions.
- The lack of detailed Study Plan requirements in the Final Rule creates opportunities for abuse by the applicant.

Final Thoughts on the ILP

- Increased stakeholder involvement is a benefit of the ILP, particularly if the applicant shows good intentions and seeks information up front. The ILP offers a good structure for cooperation.
- The applicant's cooperation with stakeholders is partially determined by FERC's willingness to play a strong role in facilitating cooperation from the start. Participants involved in projects with stronger FERC participation have been more pleased with the process in general.
- The parallel NEPA process is a benefit of the ILP.
- While tight deadlines keep the process on track and hold everyone accountable for meeting deadlines, they put a lot of pressure on agencies and NGOs with limited resources and exhausting tasks. Guidance documents from FERC outlining information

requirements and detailed roles of each sector would help with the issue of shifting the burden.

- Participants agreed that there should be more flexibility for situations where the process goes off-track or if an issue needs to be re-addressed, particularly when dealing with such extended license periods.
- Participants would like to see an ongoing evaluation of the ILP and to have continued input on how to improve the process. In addition to re-assessing the process, it would help for FERC staff to have a strong and consistent presence in each relicensing. When stakeholders discussed FERC involvement specific to their projects, they noted that some representatives seemed more sided with the applicant than those in other relicensings, and some were more involved in the meetings than others.
- Many participants suggested that the Regional Workshops should be held closer to the pioneer projects.
- Participants asked whether the results of this evaluation would be brought back to their attention before the final two years of the licensing process and were assured that the results would be discussed in the upcoming weeks at the workshops and conferences.

State and Federal Agency and Tribe Teleconference: Wednesday, May 11, 2005

ILP Preparation

- The amount of time necessary for agencies to prepare for an ILP varies greatly by size and scope of the project. For large, complex, multi-facility projects, all sectors will need several months to a year to prepare for the ILP.
- Input from FERC representatives early in the process is valuable.
- FERC and inter-agency trainings on the ILP are helpful, and applicant-conducted ILP training was helpful in putting the ILP into the context of a specific project.
- Agencies lacking experience in relicensings and small agencies with young staff had a difficult time preparing themselves for the tight deadlines of the ILP, even if they had been involved in ALPs or TLPs. Within agencies, explaining 4(e) authority to an inexperienced staff was difficult for some coordinators.
- Previously formed relicensing relationships are helpful in starting the process off efficiently. In situations where participants had not worked together, agencies appreciated proactive efforts on behalf of the applicants to meet agency personnel at their headquarters.
- Pre-consultation meetings help everyone to gather information early in the process so that when it is time for agencies to respond to the more formal requests for information they will be more targeted.
- In smaller projects, even those with very few concerned stakeholders, it is still essential to get the public to weigh in by initially casting a wide net. Everyone needs to understand who should be involved in the process.
- Though the deadlines were tight on many individuals, participants were pleased to see that all parties were adhering to them.
- The most commonly suggested tool for the general success of the ILP was early preparation and communication regarding the intensity of the project. This will help to unify stakeholders across and within the different sectors.

PAD Development

- Most participants felt that more lead time could have helped them supplement the PAD with more information, though many were pleased with the applicant's efforts to collect this information.
- Most PAD preparation began once the applicant approached the agency for information. Agencies conducted informal internal meetings and coordinated with other agencies to discuss the existing, relevant, and readily available information to provide and how to delegate responsibilities under the tight timeframes.
- The use of a survey or other tools to provide direction as to what information should be included in the PAD was helpful and allowed agencies to provide data more efficiently. Survey tools and open communication early are also means to avoiding any misinterpretations of information contributed by agencies.
- If the applicant conducts enough outreach prior to drafting the document, the PAD will be much more comprehensive and acceptable to agencies and NGOs.
- It helps for the applicant to format the PAD in such a way that agencies and NGOs can divide responsibilities based on areas of expertise in order to more effectively work together.
- PADs following the outline of FERC's regulations make it easier for agencies and stakeholders to follow. Laymen's terms are effective for agencies with young employees who have not been involved in hydro relicensings.
- For the most part, agencies look for information on project effects and resource protection. If applicants provide those in detail, agencies will not have to request as many studies.
- The timing of studies is somewhat out of everyone's control and there is not always a good way to adjust. Agency representatives are concerned about losing study seasons.

Process Plan

- Not all agencies felt equally included in the development of the Process Plan, though they agreed that collaboration would be useful in coordinating timelines and maintaining consistent stakeholder participation.
- The schedule is driven by statutory deadlines, which narrows the opportunity for input. Agency personnel recommended the use of collaboratively organized Communications Protocols and Resource Advisory Teams.
- Agency representatives thought that the process plan was helpful in terms of keeping the process on track and integrating other process needs, including 401 certification and ESA issues, especially in instances where the Process Plan was developed collaboratively.
- Identifying areas of flexibility in the Process Plan helped ILP participants adjust certain timeframes in order to move forward and increase time and resources for future phases of the process.
- Agencies must go to meetings prepared and keep up to date with the meetings.

Scoping

- Preparation for the FERC scoping meetings varied based on the scope of the project and familiarity of stakeholders with the issues.
- Some scoping meetings were held over a two day period, with an overview of the ILP on the first day, and opportunities to express concerns on the second day. While this may not always pose a problem for agency representatives, there is concern that private stakeholders and NGOs would not be able to attend both days, and therefore would miss opportunities to provide comments on the PAD or the Scoping Document.

- Agencies should review documents from the previous license or the project history on the FERC e-Library in order to become familiar with previous resource concerns.
- Multiple locations and times for scoping meetings are necessary for increased public involvement.
- FERC could tailor the meeting to the audience's questions. For example, in situations where stakeholders are less prepared or had few issues, an overview of the ILP may be more appropriate and beneficial.
- It would be helpful for FERC to publish a SD2 based on comments made to SD1 even in situations where there are minimal comments regarding the scoping document. Such efforts would strengthen the relationship between all parties and FERC and acknowledge the time agencies put into making those comments.

Study Requests

- Agencies feel pressed and ill-prepared to create fully developed study requests based on information included in the PAD. Agency representatives suggest that the applicants either include fully detailed study plans or documentation of previously conducted studies in the PAD.
- Agency representatives felt that Section 5.9 B of the regulations was ambiguous with respect to the level of detail that should be provided in the study request. They suggested clarifying the rule to place the initial responsibility of developing studies on the licensee, rather than agencies and NGOs. If proposed studies are not included in the PAD, agencies feel that the applicants should have them available upon request. Some agency representatives would prefer to respond to proposed studies rather than draft the studies themselves.
- Agency representatives were much more comfortable with study requests when the applicant communicated the details of these studies and sat in on the groups working to develop the requests. Resource Working Groups were suggested to provide feedback to develop ideas of what the applicant's proposed studies should look like.
- Participants of the discussion thought that the seven criteria laid out the process well and served as a good filter for extraneous studies while calling on resource agencies to draft them as they'd like to see them conducted. However, it was noted that designing studies is a responsibility of both the applicant and the agencies, and that the agencies should be provided with a scope of work in the PAD and Study Plan. Estimating costs of requested studies is particularly difficult.
- One agency representative noted that a lack of detailed studies in the PAD may cause agencies to be more conservative and request more studies from the applicant.

Study Plan

- Agencies would like the option of placeholder studies that are contingent on the results of other studies, as it is difficult to predict results in the first year. A provision in the Study Plan acknowledging that some studies may be inconclusive and require further scientific investigation is desirable.

Final Thoughts on the ILP

- Agencies appreciate the short deadlines and the momentum of the process, though both were referred to as a double-edged sword. The deadlines were particularly helpful to agency representatives in small, low impact projects where the process can be completed in a much shorter timeframe than with the ALP or TLP.
- The ILP lends itself toward settlement and collaboration. The process seems to have fostered better communication with other agencies, including FERC.

- The swiftness and spirit of the process are somewhat dependent on how forthright and open the applicant is with stakeholders.
- There is serious concern about the tight timeframe for completing studies. While the deadlines are effective in keeping the process moving, the study timeframes should not be compromised with such rigidity. Participants agreed that one to two years may not be enough time for studies when the ILP is implemented in larger basins with more complex systems.
- Increased participation of FERC staff is appreciated, but participants are still unclear about FERC's roles. FERC staff could have a stronger presence in encouraging collaboration between the applicant and stakeholders.
- Some agency representatives feel that the applicant is meeting the letter of the law but not the spirit of collaboration under which the ILP was developed. Better relations across sectors would enhance the benefits of the process.
- Better public and tribal participation should be encouraged by *all* involved parties.
- Participants agreed on the benefits of a collaboratively developed Communications Protocol.
- Some participants suggested holding the regional workshops closer to the locations of the ILP Pioneer Projects.
- FERC may want to consider reconvening the Inter-Agency Hydropower team to address how best to evaluate the implementation of the ILP.
- WebEx technology was appreciated, as was the input of other agency personnel with experience in the ILP.

Applicant Teleconference: Thursday, May 12, 2005

ILP Preparation

- The tools and practices beneficial to each project are dependent on several variables, such as project size, the relationship between the licensee and stakeholders, and the contentiousness of issues. Quite a bit of outreach is necessary at the beginning of any ILP, but extra steps should be taken if applicants do not have pre-existing, trusting relationships with stakeholders.
- Allow more time for ILP preparation than seems necessary. Some applicants allowed at least a year for ILP preparation and to begin communications prior to filing the PAD. Other applicants of smaller, less controversial Pioneer Projects were able to prepare for the ILP in a few months.
- The process should go much smoother now that applicants and stakeholders are more familiar with their responsibilities and can use previous documents as templates for similar projects.
- Previously established relationships with stakeholders and interactions with stakeholders prior to developing the PAD are useful. An evaluation of stakeholder relationships is an essential consideration to make when planning an ILP, though participants stressed the importance of continued outreach regardless of anything pre-existing. It helps to constantly provide opportunities for new stakeholders to become involved. Establishing these relationships ahead of time proved beneficial when it came time for stakeholders to submit information for the PAD.
- A series of outreach meetings to familiarize stakeholders with the project, introduce the ILP, begin considering the Process Plan, and capture any additional issues are helpful. Not only will these help with the openness and communication within the project, but they put all participants on track to begin the ILP.

- FERC's presence has proven helpful at these outreach meetings.

PAD Development

- Pointed and continuous requests for information will ensure that applicants receive the necessary information in a timely manner. One applicant suggested distributing a survey to stakeholders, asking what existing, relevant, and reasonably available information should be included in the PAD. This may also help the applicant develop a preliminary list of interested parties for the next steps of the process.
- Applicants suggested two time periods for gathering information for the PAD; first, a short time period far in advance of the PAD for stakeholders to simply identify information, and second, a deadline for them to actually *provide* the information when it becomes necessary.
- Applicants suggested acknowledging all information in the PAD, including that which has been identified or cited, but not yet provided or analyzed.
- The PAD is an effective tool for informing participants early in the process, though outreach should begin prior to its development.
- Using predecessor PADs as templates will make the process much more efficient in the future.
- Formatting the PAD to be user-friendly was challenging but worthwhile for applicants. Familiar language and formatting with the use of lead-ins and summaries helps stakeholders reference the document in subsequent meetings.
- Maintaining ownership of the document is important for maintaining the integrity of the ILP. Rather than revising the PAD, some applicants still find it helpful to acknowledge comments on the PAD as a part of the formal record. While some applicants did distribute parts of the PAD prior to submitting it to FERC, applicants generally did not distribute draft PADs.
- FERC's input on the draft PAD was valuable in most of the Pioneer Projects.

Process Plan

- Gathering collaborative insight on the Process Plan is helpful in reaching agreement in terms of timelines and coordination with other processes.
- The Process Plan is essential for such a quick process. Applicants suggest creating a draft with FERC, speaking with agencies about deadlines and other processes, then collecting minor changes from stakeholders when developing the Process Plan.
- The Process Plan is an effective tool and helps all stakeholders visualize the process, rather than just the licensees. Gathering collective input regarding deadlines gives stakeholders good ownership of the process.
- FERC's involvement in enforcing deadlines and sending reminders was appreciated among the applicants.
- Identifying milestones that would be unnecessary without disputes motivates participants to put studies on the ground and to try to avoid disputes throughout the process.
- The option of condensing some timeframes in order to accelerate the schedule or lengthen another phase of the process is helpful.

Scoping

- Stakeholder preparedness for scoping meetings is partially dependent on whether stakeholders had read the PAD. NGOs and agency representatives were more likely to read the user-friendly, digestible PADs.

- Emphasize the importance of scoping preparation to stakeholders. Prepare stakeholders through weekly or bi-weekly emails to all interested parties. Suggest places to start reading the document and specific resource issue tracking.
- Encourage stakeholders to look for issues not identified in the PAD.
- Scoping meetings did a good job of tying up loose ends rather than starting at the beginning.
- Stakeholders without project concerns or issues attended scoping meetings to learn about the ILP and to make themselves aware of the relicensing.
- Success of scoping meetings was attributed to FERC's presence.

Study Requests

- The regulations need clarification of how much detail to include in the PAD and Study Requests. FERC's input was necessary in issue resolution, but inconsistent between projects. Where one FERC representative said that the applicant's initial study requests had to be more than conceptual, another FERC representative in a different proceeding told the applicant that a conceptual study request would be sufficient.
- Prior to the PAD, discuss and establish with stakeholders the appropriate level of detail needed in PAD and Study Requests.
- Majority of consultation regarding studies was conducted after issuing the NOI.
- Informal study plan workshops before the release of the Proposed Study Plan provided tremendous amounts of input.
- Solicit study requests from agencies and work collaboratively with them.
- Use of a study plan template using the seven criteria helped agencies draft their requests.
- Responsiveness to the seven criteria helped the group resolve issues and focus on the project nexus. The criteria form the backbone of the studies.
- Even when agencies met criteria, the nexus wasn't as tight or as neat as what the applicants needed to see.
- Criteria hold stakeholders somewhat responsible for cost, which makes them conscious of the level of scope and effort they are asking for.
- FERC's enforcement of criteria is helpful.
- Examples of good Study Requests would be useful to applicants and requesting parties.
- Resource agencies got together to complete the same request and each supplemented it with their own resource requests.
- Applicants noted the high level of anxiety among agencies regarding whether they'd meet all the deadlines.

Study Plan

- If fully developed Study Plans are not included in the PAD, it would be useful to at least have them on hand to jump-start the Study Plan development process.
- Concern exists over the collaboration of agencies with and without mandatory conditioning authority. If a requested study has merit, everyone, including mandatory conditioning agencies, should consider it carefully.
- Where an applicant anticipates a potential dispute over a study, it may be wise to provide a detailed alternative approach.
- Applicants should weigh the pros and cons of conducting preliminary studies.
- It is important to adhere to the structure of the ILP and for the necessary participants to maintain proper ownership of each phase of the process. Conducting studies too far in advance of the NEPA process has potential to unravel the concept of a tight process.

- Study Plan outreach meetings between scoping and filing the Proposed Study Plan were helpful in making necessary linkages and identifying information gaps. A workshop on project operation helped participants understand the project and its effects, as well as improve communications.

Final Thoughts on the ILP

- Clear time limits will hopefully prove helpful in getting licenses issued more efficiently.
- Criteria similar to the seven used for the study process should be used when contemplating mitigation measures.
- Several applicants expressed concern that the license process may be stalled post-filing due to reasons that have affected the ALP and TLP—delay in issuing 401 water quality certifications, completing endangered species consultation, etc.
- Uncertainty surrounds whether larger, more complex projects will go as smoothly under the ILP.
- Everyone values the increased FERC involvement in each proceeding. The applicants agreed, however, that if FERC doesn't have this level of involvement in future ILPs, they will not go as smoothly as the Pioneer Projects have.
- Ongoing stewardship programs should be consistently enhanced and practiced. It helps to build relationships to show that applicants understand resource concerns and can commit to stewardship.
- Future effectiveness evaluation measures should examine the errors and areas of ambiguity in the regulations. There are many opportunities to improve the rule without changing the framework.
- Another cycle of the effectiveness evaluation should occur one to two years from now to see how the study performance played out in terms of study plans, and two years following that to assess the appropriateness and efficiency of mitigation measures.

Chapter 3

Regional Training and Effectiveness Workshops

Four regional workshops were held between June 7 and 9, 2005, in Albany, New York; Sacramento, California; Columbia, South Carolina; and Spokane, Washington. The purposes of the workshops were two-fold: to educate future ILP participants about the process, and to provide a venue to get feedback from other participants involved in the Pioneer Projects that had not yet had a chance share their thoughts. An overview of ILP and each step was provided by Commission staff. This was followed by a summary of comments received during the interviews and teleconferences. Panelists representing a pioneer project in the area were present to share their thoughts about how their process was going and how they dealt with issues. A summary of the comments relative to the effectiveness evaluation are provided below.

Albany, NY: June 7, 2005

PAD Development and Process Plan

Audience Questions

FERC responded to audience questions with the following points:

- The Commission reviewed and provided comments to the Pioneers' draft PADs in order to ensure that the PAD contained adequate information. FERC does not intend to review every single draft PAD that is submitted. Applicants and stakeholders can review the different PADs filed with FERC on eLibrary to get a better sense of what a PAD should contain.

Panel Discussion

Each bullet below represents a panelist's response.

What is the single most important thing one needs to do to prepare for the ILP?

- Reading the ILP Rule helped stakeholders prepare. He encouraged a collaborative process and recommended that participants play an active role. In order to have a better understanding of the process, stakeholders should attend workshops, meetings and training sessions.
- Reading documents, such as the PAD may help stakeholders prepare for the process. Early participation should be encouraged. The importance of early involvement is to be able to identify information that needs to be included in the PAD.
- Some projects may require less preparation for the ILP than others, due to lack of changes in the project area or lack of resource concerns. Even in these situations, however, early participation is important.

What constraints or problems did you encounter in either providing or obtaining information for the PAD and how did you deal with them?

- There were very few issues that did not require extra effort in obtaining information. Ensuring that stakeholders involved in the process understood the ILP process was challenging. However, FERC's trainings and workshops helped bring everyone "up to speed." FERC's review of the PAD was very helpful in ensuring that the PAD was complete.
- There were no significant problems; however agencies had to concentrate on dedicating resources to provide the information to the applicant in a timely manner.
- There were no significant problems with providing information for the PAD. Stakeholders were spread out over a broad region of several states. As a result, the challenge became involving all of the stakeholders.

The regulations encourage the development of a distribution protocol. Have you found this to be useful and why? Are there other tools that may also be helpful?

- Using the e-Library facilitated the process. Additionally, creating a distribution protocol was advantageous and helped to establish a reliable way to disseminate the information to the stakeholders.
- Documents were easily accessible. A member of the audience stated that the applicant should keep in mind that all stakeholders do not have Internet access. Instead of or in addition to relying on email and websites, applicants must provide hard copies of the documents to stakeholders.

Scoping

Audience Questions

FERC responded to audience questions with the following points:

- FERC is responsible for holding and conducting the scoping meetings

Panel Discussion

What is the one thing that all stakeholders can do to make scoping the most productive?

- Stakeholders need to understand what their role is in the scoping meetings. Stakeholders should be familiar with the process and read the PAD in order to prepare.
- Meeting attendance is extremely important, although many participants have traveling constraints. There were occasions where no other agencies attended the scoping meetings, but would submit comments later. Active participation was critical and should continue to be encouraged.
- The scoping meetings are intended to be interactive. People should not be hesitant to engage in discussion. Any feedback or suggestions on how to encourage active participation should be brought to the applicant's and the Commission's attention.
- Different locations and meeting times should be considered. Regional concerns, holidays, and seasons should be considered as there are times when participants cannot attend.

Study Request and Study Plan Development

Audience Questions

FERC responded to audience questions with the following points:

- If a stakeholder recommends that an additional study is needed, there must be a good cause why the study should be conducted. Stakeholders should consider the threshold that is placed upon the request after the first study year and second study year.
- Further clarification is needed regarding whether or not a competitor is required to file a PAD for a new license. To date, there have not been any cases where a competitor has filed for a new license, and the Commission will deal with the issue if or when it arises.
[Answer: A competitor must also file a PAD.]

Panel Discussion

What is the top thing that can help make an effective and efficient study plan development process?

- Participants must want to collaborate and a collaborative process is what makes the ILP effective. NGO's do not have the same resources the licensee may have, but it is important for the applicant to try different methods of collaboration to ensure a smooth process.
- Participation helped to make the study plan development process efficient.
- Respect amongst all stakeholders was a key component to making the entire process effective. Understanding each other's views and being willing to collaborate assisted in the study plan development process.

Sacramento, CA: June 8, 2005

PAD Development and Process Plan

Audience Questions

FERC responded to audience questions with the following points:

- Should an applicant want to use the Alternative or Traditional Licensing Process, it must explain to FERC that the process will better fit the situation and still move forward in a timely manner. A list of requirements that should be addressed in the request is included in the regulations.
- ILP Participants should take advantage of the FERC eLibrary for examples of previous ILP documents.
- It is at the licensee's discretion whether or not to be collaborative on the Process Plan. While the steps are defined, participants can move the process forward if consensus is reached.

Panel Discussion

Each bullet below represents a panelist's response

What is the most important step in preparing for the ILP?

- Attitude is essential in ILP preparation. The ILP is different in that it requires the applicant to bring participants on board. The PAD is instrumental in engaging stakeholders to the process and familiarizing them with the project.
- The licensee's attitude does set the stage, but everyone is working in a tight timeframe. As part of the commitment to working on the ILP, agencies should consider Human Resources that should be applied to the process. Agencies must also collaborate with the applicant to decide on the necessity of conducting early studies. The process is labor-intensive and a detailed PAD is important.
- Considering the timeframes and time commitment from independent stakeholders is helpful. For stakeholders from NGOs or representing themselves, a flexible schedule is necessary due to the intensity of the schedule.

Could you provide advice to applicants related to the ESA compliance process?

- In some cases, there maybe ongoing actions relating to endangered species consultation at the same time that an applicant is beginning to relicense its project. Both the license amendment process and the relicensing process have their own requirements and when they occur simultaneously, some of the information may be shared. There is an entire component of the relicensing that must be looked at under ESA.

Does the integration of a Biological Assessment (BA) format into the PAD increase efficiency?

- The idea of a PAD is to discover what information exists in order to move forward with the proceeding and to identify information gaps to facilitate study plan development. The PAD may be premature to format as a BA, but certainly some of the information could be used in both documents.

Did you have enough information to provide to agencies in order for them to help make study recommendations? Do agencies feel that they got enough information to start determining the necessary studies?

- An applicant might consider examining other PADs as a model of what and how much information to include. By engaging stakeholders, participants can identify potential issues, studies, resource measures, etc, all of which will influence how much information is needed. In our case, the PAD brought this information together in a digestible manner so that the PAD would created a framework that reflected everything heard during outreach.
- There is always room for more information; regardless of how high the bar has been set. Meeting with agencies and supporting one another in collecting pre-PAD data for the PAD was beneficial but depends on the project and the existing available information.

How do you divide project impacts versus other impacts that can't be addressed by FERC?

- The phrase “existing, relevant, and reasonably available information” is an appropriate guideline for including information into the PAD and as a formal part of the proceeding. Anything that meets that three-point description must be included in the PAD, and that anything mentioned prior to the NOI and not included in the PAD is not a part of the formal proceeding.
- Stakeholders should ask agencies to come together and pool information and completed efforts. The FERC boundary is the legal project boundary but not always considered for the purpose of the 401 certification.

How useful was the applicant’s questionnaire in gathering information and how strong were the responses?

- The questionnaire was very useful but came at a time when NGOs were still adjusting to the timeframe and increased required commitment. Not knowing exactly what information would be included in the PAD, stakeholders may not be sure of what information should be provided or is already possessed by the applicant. In retrospect, this stakeholder would have recommended more information, particularly historical. In order to prevent this oversight in the future, the applicant could distribute a list of existing information already possessed by the applicant so that other stakeholders are not required to determine which information may be missing.
- Approximately 20% of the surveys were returned and they probed for awareness of information and relevant contacts. The responses were useful as starting points for collecting additional information and developing a list of interested parties.

Can stakeholders assume that all information will be available and included in the PAD or is it the stakeholders’ responsibility to direct the applicant to the information?

- A Commission representative responded that the applicant has a due-diligence standard to obtain all information that’s reasonably available and to summarize it the PAD. If the information is of particular importance to stakeholders, it’s best to notify the applicant of the availability of that information.
- Applicants should create a PAD with the intention of it being a user-friendly document and the working document of the project. Requesting information up front ensures that the applicant includes mention of it in the PAD.

What is FERC’s expectation of how confidential information should be handled?

- A Commission representative responded that it’s handled just like any other proprietary information and that FERC evaluates whether or not to allow the information to be kept proprietary. The PAD can be filed in volumes, with confidential cultural information contained in one of them that is redacted from the public files.

What communication and distribution tools are beneficial?

- Differentiating between levels of involvement and creating appropriate distribution lists may be helpful, as some documents go to everyone and others are more appropriate for the more tightly connected group of stakeholders.

- A Commission representative added that the regulations strongly encourage a distribution protocol. An audience member added that electronic communications are not as reliable as one might hope, and that there are frequent problems associated with distributing information to agencies with firewalls.

For an applicant, what percent of resources should be allocated to PAD development?

- In our case, six months was not enough time for one applicant to develop a PAD. A project without much pre-existing information may require a minimum of one year for preparation. The cost of PAD development may be close to 20% of the total cost, though it's dependent on the level of difficulty an applicant has summarizing information and on how much information exists. In situations where many studies must be developed, the applicant will spend a lot of money. It's very project specific.

Scoping

Panel Discussion

What is the one thing that all stakeholders can do to make scoping more productive?

- Scoping was very beneficial, but additional preparation would have helped. Pre-PAD scoping meetings were helpful, and stakeholders appreciated the applicant's early outreach. Reading the PAD for important information references is key.
- Becoming familiar with the PAD (potentially through a site visit prior to scoping) is helpful. State agencies are lead agencies for CEQA, and are working with FERC to streamline the process and dovetail the noticing phase into the scoping process.
- The PAD creates an opportunity to identify, describe, and propose studies, and to identify information gaps. Try to capture 80%-90% of the issues that would appear in scoping in the PAD and then ask stakeholders to discuss issues that weren't adequately addressed in the PAD during scoping. Applicants should engage stakeholders in informal calls and emails, encouraging them to read the PAD and come to scoping meetings prepared.

How does one deal with disputes over what is and is not an issue in the relicensing? What are the forums for resolving whether or not a concern is an issue?

- A Commission representative responded that scoping is FERC's responsibility and the meetings are run by FERC. If stakeholders attend meetings and state issues, their comments will be included in the record and addressed in the NEPA analysis. This applies to studies as well. The Commission will make sure that the studies needed to complete its NEPA analysis are conducted and addressed in the study plan.

What kind of feedback have you received regarding FERC involvement?

- Kearns & West responded that in general, stakeholders are very satisfied with FERC involvement and engagement. The panelists confirmed their satisfaction. A Commission representative added that FERC has been involved early on in Pioneer Projects and has heard a lot of positive feedback. A panelist echoed the

appreciation of FERC involvement, noting that when FERC is absent from meetings, the role of decision maker shifts to the applicant. Therefore, FERC's presence helps the applicant focus on its own tasks.

- FERC has taken on an important role in guiding the process and for interpreting the regulations.

One purpose of scoping is to consider all possible alternatives that will be analyzed. What if someone brings forward an alternative with pre-existing information that is not included in the PAD? Will the applicant issue a revised PAD to address new alternatives that are brought forward?

- A Commission representative responded that there really is no provision in the regulations to require filing a revised PAD. However, if studies are needed to address the alternative, FERC will make sure the proposed study plan contains the study.

What characteristics create a more interactive scoping meeting?

- The kiosk approach worked well in some scoping meetings. The applicant invited participants to view lists of issues and add additional issues and comments to available flipcharts. This was effective in getting stakeholders to focus on issues that may not have been sufficiently addressed in the PAD.

Can stakeholders request a pre-PAD meeting and get stakeholder and FERC involvement?

- A Commission representative responded that FERC involvement cannot be guaranteed, but the Commission is making an effort to attend. To request FERC attendance, the representative recommended contacting a branch chief for that area. FERC needs to know the intent of the meeting, targeted participants, agenda, and any other relevant information. It is the applicant's decision whether or not to hold ILP overview meetings. While it is not required in the ILP, it certainly helps.
- There is value in holding pre-NOI outreach meetings, particularly where each targeted a specific subject.
- It is difficult to block time for the specific stages of each project, particularly when stakeholders are used to previous licensing processes with less defined deadlines. The purpose of consultations must be clearly stated and planned.

Study Request and Study Plan Development

Audience Questions

FERC responded to audience questions with the following points:

- If stakeholders are not confident that they will meet the two year window for study requests, they must justify to FERC why two seasons will not be enough.
- Existing study methodology could be referenced in the PAD. FERC suggests compiling as much detail as possible as early as possible.

- In situations where agencies are requesting studies contingent on other studies (for example PHABSIM) they should provide as much detail as possible regarding methodology, then discuss or negotiate the methods at the study plan meetings.
- FERC staff should maintain a record of all communication related to the merits of the proceeding and to file that record in the project docket. Study Plan Determination will be based on all of the documents and all of the process communications.
- Agencies should anticipate the need to obtain any permits required to conduct studies for threatened and endangered species.
- In situations where new studies are needed based on the results of one study, mention all potential necessary studies up front.

Panel Discussion

What are the top two things that can be done to ensure an effective and efficient study plan development process?

- It is the licensee's duty to include in the PAD as detailed a list of studies as they can. It is not necessarily an obligation of agencies or NGOs to develop the study plan. Applicants could include copies of citations of studies on the web if something obscure is the basis of a protocol. This will help stakeholders better understand the study methodology. The language in the PAD is "study recommendations" but that the earlier the applicant starts discussing study methodology, the better.
- Applicants should be as forthcoming as possible in PADs, as they are best positioned to identify available information, compile issues, and assess the information that is still needed. In doing this, applicants could consider creating and populating a study template inclusive of the seven criteria. The criteria help to create a discipline and timeframe for information needs.
- The nature of the study request and study plan development phase is challenging from an NGO perspective. Stakeholders should attempt to prepare financially for consultants to help recommend studies. As an alternative to a consultant, there is value in collaborating with agencies to discuss study plans that were submitted and to get advice on how to approach the studies they felt were important as a part of study plan development. The last two criteria were the most difficult to address.

What can a licensee do to get all sectors to agree on consultants?

- Agencies should work together to develop studies they can agree upon to meet all of their needs.
- One of the strengths of working collaboratively is sharing expertise. The criteria ensure that methodologies are identified. Applicants must provide their rationale for not adopting requests or considering comments from stakeholders. Each comment must be acknowledged if it's not adopted and all study plan requests must be tracked and sorted. Transparency is very important.
- Working with several agencies to redefine ideas and provide comments supported by his organization was valuable. Building trust with technical consultants to take the methodology and put it into practice was useful. A system of checks and balances within the relicensing is helpful, particularly when negotiation begins.

- There is a serious disconnect for community groups who are at a disadvantage of not knowing what to comment on or what studies to recommend, so collaboration with agencies and technical consultants is essential.

Audience Comments

For future trainings and effectiveness evaluations, audience members considered going over the study criteria in greater detail and including a discussion of the studies necessary to complete a Biological Assessment based on a Biological Opinion. Additionally, stakeholders requested suggestions on how to handle the accelerated field season and the implications that acceleration might have on modeling.

Columbia, SC: Thursday, June 9, 2005

PAD Development and Process Plan

Panel Discussion

Each bullet below represents a panelist's response.

What is the single most important thing one needs to do to prepare for the ILP?

- Participants are encouraged to prepare for the process by reading the Final ILP Rule. The applicant should start very early and consult with interested parties.
- Preparing ahead of time and conducting comprehensive planning is important.
- Having training sessions and meetings with stakeholders provided an explanation of the rules, regulations, and processes to everyone. This helped with the process because FERC was there early on and people understood the process, which allowed everyone to address issues.
- A Commission representative reminded the group that it is important to be involved in the beginning and to devote resources early.

For the utilities, how long did it take you to prepare the PAD before you filed it?

- It took approximately one year from the beginning to the end, but it is important to anticipate the information that is available and the number of stakeholders the applicant needs to contact. The length of time depends on the applicant's past experiences with stakeholders and other licenses.
- It was difficult to say how long it took to prepare because of delays due to adjustments from the ALP. After spending a year into the PAD preparation, the applicant spent time educating the agencies and stakeholders. Time spent to prepare depended on how much information existed and the relationships the applicant had with the agencies and stakeholders.

Do you think that study dispute resolution will become more popular because there are strict timeframes?

- Although FERC believes there is enough time available, FERC cannot determine whether the dispute resolution process will be used regularly or not due to small samples. The Commission asked FERC staff to conduct effectiveness evaluations on the ILP process. FERC is in the process of collecting data on what people want to change and will continue to gather information as larger samples become available.

What is the relationship between the PAD and the EA? Does FERC like a PAD that can be structured like an EA?

- A Commission representative noted that applicants have the flexibility to structure the PAD as they like. Structuring the PAD like an EA may be beneficial, as applicants can continue to add to it as more information is available.

What concerns or issues did you have in gathering information for the PAD?

- There were no major problems gathering information, but preparing a draft PAD for all of the stakeholders and agencies to review was beneficial. By holding meetings on what the applicant was doing and what needed inclusion in the PAD, stakeholders could provide information to fill the gaps. Going to a lot of different sources, such as universities, and local groups is also helpful.
- Take advantage of any information that already exists and include it in the PAD. When gathering information, it was important to ask for all existing, relevant and reasonably available information. Anecdotal information and opinion may be offered, but may not need to be included.
- A consultant added that an applicant may receive large amounts of existing information and that the challenge becomes determining what is relevant. Stakeholders may raise issues that are not relevant to the project. Try to get them to focus their concerns to demonstrate the relevancy of the project.
- A Commission representative stated that there was a change in the regulations that now requires that all projects to have a project boundary and for the boundaries to be geo-referenced. All applicants are encouraged to be very clear on what the project facilities and operations are.
- It is important to describe all aspects of the project. People need to understand how it works, and using animated graphics was helpful in expressing that operation. Many stakeholders were easily confused with text descriptions.
- Holding specific meetings focused on a break down of a step-by-step description of high-flow and low-flow conditions, constraints placed upon the river, and water quality criteria can help stakeholder understanding of project operations. Based on stakeholder interest, a primer on project operations and these areas were melded together to give stakeholders a better understanding of the project.

Would a licensee perceive it to be appropriate to conduct a recommended study during the development of your PAD or recommend waiting? Do other stakeholders have input on when the study should be conducted?

- Gathering all of the input from the stakeholders and getting a consensus was beneficial. The goal should be consensus. Agencies with 401 certification authority have an impact on what studies are conducted. If the applicant spends a lot of money and time, and an agency asks to conduct the study again, the applicant loses money.
- It is important to provide a preliminary list of contacts to stakeholders. The PAD is the precursor to the NEPA and EA documents. If the agency has an interest, it is in the applicant's best interest to consider it before writing the PAD. Some scientists have ongoing studies and data that can be shared, which may enhance the applicant's data collection. You may also want to consider the seasonality of the study and how it fits within your plans for developing the PAD.

The regulations encourage the development of a distribution protocol. Did you do such a thing for your project?

- A variety of communications were used. With advanced communication technologies available, applicants can use electronic filings, meetings, emails and websites. The FERC website and docket were ways to keep up to date with proceedings. Stakeholders can access the docket via the web. It is also wise to provide hard copies of everything to those who requested copies.
- Developing a communications protocol and distribution protocol and ensuring that the applicant received all copies of communication to FERC was helpful. The applicant stated that after the first free copy, stakeholders would be charged for additional copies, because hardcopies are expensive to produce. Additionally, when filing early, FERC may ask the applicant to make a change to the schedule.

Scoping

Panel Discussion

What is the one thing that all stakeholders can do to make scoping the most productive?

- Forward-looking stakeholders make the process run more smoothly. The focus should be on the relicensing of the project and the ongoing years.
- More people need to understand the project prior to scoping. Understanding the constraints and how they're related to process proved to be practical.
- Come to the meetings prepared by reading the PAD. The purpose of scoping is to identifying the issues for further consideration.
- A Commission representative stated that the scoping meetings are intended to be interactive. People seemed to be hesitant to engage in discussion. The Commission asked participants for any feedback or suggestions on how to encourage active participation, but no response was provided.

Study Request and Study Plan Development

Audience Questions

FERC responded to audience questions with the following points:

- FERC realizes the environment is not perfect and the regulations provide a means to modify study plans when the environment doesn't cooperate. However, if a stakeholder recommends that an additional study is needed, there must be a good cause why the study should be conducted and there is a certain threshold after the first study year and second study year.
- Everyone has the opportunity to comment during the comment period; however study disputes are limited to the agencies with mandatory conditioning.
- The applicant must provide a good basis why they chose not to conduct a study. All comments are reviewed by FERC and FERC staff reviews the record. The applicant lists the studies that were proposed and were not adopted.

Panel Discussion

What are the top two things that can help make an effective and efficient study plan development process?

- Participation by everyone when holding the meetings is very important. Agencies with mandatory conditioning authority should also be sure to attend. Good baseline information, especially in the PAD, prevents the applicant from recreating what already exists. The more information an applicant has up front, the more efficient the applicant could be in making the studies cost effective.
- The study criteria are helpful, but the nexus criteria was challenging.
- Stakeholders are given multiple opportunities to discuss and identify issues throughout the ILP.
- The Commission representative added that the use of the study criteria is the tremendous advantage of the ILP. FERC understands that some have had difficulty with the nexus, cost and level of effort criteria. FERC's opinion is that stakeholders should carefully consider costs, number of people involved, and level of effort. One goal is for everyone to have good information to make decisions.
- In response to an audience member's question regarding baseline studies, a Commission representative responded that the Commission needs to study what is currently on the ground. As part of cumulative effects analysis, FERC looks at past, present and future effects, but FERC may use available information and may not require studies to look at those effects. The FERC representative suggested that the goal is to be forward looking and a good way to accomplish that goal is to answer questions such as what are the resource goals; what information is available; and what information is needed to determine the best possible way a project should operate.

How does FERC determine whether the cost criterion is reasonable?

- A Commission representative stated that one of the purposes of the criteria is to encourage stakeholders to talk among themselves thoughtfully and determine what is reasonable.

- Interested parties get together to discuss the resource goals, objectives and identify interests. It is important that the parties have these discussions in the most efficient and economical way.

Spokane, WA: June 9, 2005

PAD Development and Process Plan

Panel Discussion

Each bullet below represents a panelist's response.

What is the single most important thing one needs to do to prepare for the ILP?

- The adjustment from the TLP to the ILP involved selling the process to management as a risk but also as an opportunity for a new, more efficient process. The most important aspect going into the ILP was the company's pre-existing relationships with stakeholders from previous relicensings. Secondary to these relationships was a solid understanding of the scope of potential issues.
- Agencies work to dedicate staff to the process due to its fast-paced nature. Staff needs to be committed to tracking and providing comments when necessary, and planning and adhering to a tight timeframe.
- The commitment is not just a matter of collecting information or providing staff, but also involves stakeholder outreach and collaboration with the applicant, agencies, and other NGOS. Applicants have to obtain stakeholder buy-in early in the process, rather than just asking for information.

What constraints or problems did you encounter in either providing or obtaining information for the PAD and how did you deal with them?

- Obtaining information was a struggle. A solution is to connect data needs with project impacts. Applicants should also provide general information about the watershed and the areas of concern. Applicants should continue to remind everyone to make the connection between project nexus and the issues being discussed. This will help to shape the information suggested for inclusion into the PAD.
- Asking stakeholders for information early yielded quite a bit of general information, some of which was relevant and therefore included. Developing a strong PAD and getting it out to stakeholders early is important in ensuring that they can provide information based on what they read.
- A Commission Representative noted that every project will be different and some may have more available information than others. The regulations require all existing, relevant, and reasonably available information to be identified and summarized, which requires an extended effort on behalf of the applicants.

What constraints did you encounter while obtaining information for the PAD and how did you deal with them?

- There weren't too many problems in obtaining information, and stakeholders were involved in preparing the PAD. Information was collected from universities, NGOs, etc. The struggle was in determining what to include in the PAD and what to put in the appendices.
- The difficulty was in knowing who to ask and what to ask for. Despite working collaboratively with agencies, we could have done a better job of asking more pointedly for information relevant to the PAD. In hindsight we should have worked more closely with agencies to identify information needs and to be sure we asked the right questions.
- There were not any significant problems with information gathering, though the applicant should consider conducting an initial assessment to get an idea of who is concerned with the project. Making contacts as early as nine months in advance should provide enough time to obtain information. The PAD is a foundation document and a working document. A weak PAD will cause problems later in the process. Revised and resubmitted PADs may complicate the process deadlines, but could lead to a better document.
- Revised versions of the PAD were suggested during the ILP rulemaking, but there was a logical reason for striking it from the process.
- A Commission Representative followed that the key to preventing a deficient PAD is making sure the information is available which means everyone must pitch in to identify information. How updated information is disseminated is up to the applicant's discretion.

How are you adjusting to the tighter deadlines of the ILP, particularly during the study phase?

- The two year study season in the ILP regulations is attainable if there is collaboration with stakeholders. Studies can begin prior to the PAD if stakeholders are likely to agree on them and the studies are conducted correctly the first time.
- A Commission Representative added that the ILP is structured with the intent of completing all studies by the time an application must be filed with the Commission, which is within two years of license expiration. If a commission-approved study plan should take longer, which should be rare, the Commission has committed not to issue a Ready for Environmental Analysis until all approved studies are completed.
- A key element in the 401 certification was starting studies early. Applicants and agencies need to be aware of upcoming licenses and consider who will have authority and what will need to be done if two or three years is not enough. It may be wise to start 401 consultation two years early.
- Conducting studies in advance has a lot to do with stakeholders and issues, and the summary of existing information.

What is the expectation that information gathering and stakeholder consultation will be required to cross the border into Canada or Mexico?

- A Commission Representative responded that international issues will be a concern for some projects and applicants are expected to cross borders to gather relevant information and to consult with interested parties.

What does a user-friendly PAD look like?

- From an ESA perspective, information relevant to threatened and endangered species is expected in the PAD. This includes recovery plans, designations, existing information packages for distribution, assessments of presence/absence, and project effects.
- A good PAD provides complete pictures of the impacts, addresses alternative operations, and sets a baseline for participants to focus on alternatives in studies.
- A robust and user friendly PAD has a lot to do with the stakeholders and issues and summaries of existing information. It is important to include an overview of information, pre-scoped issues, and proposed initial studies that stakeholders have deemed necessary. The process moves so that anything that can be done beforehand will be beneficial.

What is the value of a distribution protocol required in the regulations? Can you recommend any other useful tools?

- A communications protocol frames the entire process and is a key aspect of the relicensing in obtaining buy-in from stakeholders on the process and objectives. Combining both communications and distribution in the protocol was helpful in the Mystic Lake proceeding.
- Stakeholders do appreciate the communication and distribution guidelines outlined in the protocol and HRC is trying to encourage other applicants to do the same.
- The Commission representative followed that the regulations encourage a Distribution Protocol. Communications Protocols are a hold over from ALP that were required to ensure open, transparent communications with FERC staff. The ILP regulations now require that all communications with staff on the merits of a proceeding to be put in the project record to ensure transparency. The purpose of the distribution protocol is to distill and describe how best to distribute information to stakeholders. When asked how to get around stakeholder requests for a distribution *and* communications protocol, even though one document satisfied both, the Commission representative responded that if the applicant has met the regulations, they are not obligated to change their format of the protocol.
- Working with FERC on deciding what to call the protocol was helpful. It is important to be consistent in the naming of such documents.

What resources are available as learning tools for other ILP participants?

- A Commission Representative suggested that the Commissions eLibrary can be used to do searches for recent PAD filings and recently issued licenses.

Where do you recommend applicants look for information relevant to the PAD?

- The HRC will soon be coming up with a toolkit of settlements broken down by area. There is value in working with other sectors to find information and bring it to the table. Local river-user groups are also very knowledgeable about the river and are there every season. Property owners know a lot about flow data.
- A Commission Representative added that querying local stakeholders for water quality information can provide insightful information.
- Early communication will help stakeholders determine the effects of the project and will assist the applicant in gathering information.
- Discussing the project with the public established strong community relationships.

Scoping

Panel Discussion

What is the one thing applicants and stakeholders can do in scoping to make the process most productive?

- There is great value in completing as much as possible ahead of schedule. Pre-scoping issues and working with stakeholders during the development of the PAD facilitated the scoping process.
- Representatives from stakeholder groups were encouraged to attend scoping meetings after reviewing the PAD, and the next step was to ensure that the meetings were well managed and facilitated to keep the ball rolling.
- Having increased FERC involvement really improves meeting management and dialogue.
- The Commission Representative responded that FERC has been working hard to have more interactive and productive scoping meetings. The effectiveness of scoping meetings varies depending on stakeholder preparedness.
- The scoping meetings of one proceeding involved no members of the public and suggested that it may have been due to oversight in noticing the meeting.

Study Requests and Study Plan Development

Audience Questions

In response to questions from the audience, FERC staff made the following points.

- As issues become more fully scoped, the level of detail in the study requests and proposed study plans should also increase. The greater level of detail provided by each participant will facilitate each of the study development stages.
- The process lays out a framework for getting through study disputes in a timely manner, the end result being a good Study Plan.

- FERC is trying to work with tribes to better understand issues and make sure they understand the process. The regulations require meetings between FERC staff and tribes to the extent the tribes desire such a meeting.

Panel Discussion

What are the top two things that can be done to ensure an effective and efficient study plan development process?

- The seven criteria were very useful and were a key aspect in moving the study planning phase along. Preparing (four years) in advance for the relicensing allowed an applicant to begin discussing studies with the state mandatory conditioning agencies and a prominent NGO. There was concern among stakeholders that the applicant couldn't begin conducting studies before scoping had been completed, but it helped the process to begin studies before the formal study sessions. Without disputes, there is now an even more extended study season. This wouldn't have worked so well without those pre-existing relationships with the agencies. The timeline is tight, but early consultation allowed studies to be stretched out over several years rather than compressing them into two. Agencies were supportive of the preliminary studies to evaluate the existing environment such as presence/absence of resources that are affected in the project. The incentive was that the sooner the applicant could get a license application, the sooner they could begin implementing PM&Es. Everyone was and still is learning as this process moves along.
- Comments should be made to clearly explain why parts of studies were left out to help the stakeholders review the evolution of the Study Plan.
- Specificity in detail and an explanation of the expectations of the study and methodology are helpful. It is increasingly important for NGOs and stakeholders to get more technologically savvy and to file joint study requests. FERC should keep an open mind about being a commenter at the same time as the reviewer.

Were pre-PAD studies valuable?

- Presence/absence studies were valuable, though each situation differs by project.

Would there be a study to understand whether there is an impact when it is not certain?

- One project conducted studies over the last two to three years, prior to filing the PAD and provided a report of those studies to show that there wasn't an impact and to close the book on the issue early in the process. This requires a collaborative, interactive attempt to identify the preliminary studies.
- The seven criteria were useful. The lesson learned was to respond more locally or specifically to agencies' requests for studies. Applicants might consider putting a matrix of issues versus studies together as a tool to work through information needs with agencies and stakeholders.
- Collaborating throughout the study plan meetings required tracking the changes to the proposed plan. Leave room for adaptive management in consultation with agencies. There is a delicate balance between specificity and flexibility in the study

plan, suggesting that in some cases everyone may agree to a protection measure as opposed to a costly study.

- The Commission representative added that it is often difficult to reach agreement on the level of detail for a proposed study. It is important for the applicant and stakeholders to clearly document all agreements and disagreements and the basis for those disagreements using the study criteria.
- With regard to implementing protection measures instead of doing studies, the Commission Representative cautioned that the Commission will still need sufficient information to justify the need for the measure and to draw a nexus between the measure and project effects. Mere agreement among the parties on the measure will not be enough.

Does the opportunity for an innovative study approach still exist with the tight timeframe?

- Most parties involved wanted to see good science and were looking at different approaches. He attributed part of the ease with having started consultations early and having worked with stakeholders in previous projects.
- A Commission representative cautioned parties not to develop a study that is too vague for the Commission to approve. Stakeholders should develop a decision framework as an aspect of the study plan that clearly explains how the study will be modified based on certain outcomes.
- Some studies were more conceptual than others in the PAD, but FERC regulations outline what is necessary.
- The smooth process can be attributed to the coordinated submission of study plans, internal review of study requests, and dialogue with other stakeholders that led to “beefing up” study plans. The applicant relied heavily on the seven criteria. Coordination with agencies was extensive and helped in developing a good rapport with other stakeholders who were on the same page.
- Some agencies have more force in the process than NGOs and NGOs should realize that it’s important to work with the agencies on resource issues. Joint study requests and multiple parties focusing on the same priorities are important.
- A challenging aspect is trying to discern historic data or information independently, if it wasn’t included in the PAD. There needs to be a way to identify what impacts exist initially. Older hydro projects don’t have any water quality monitoring so there is no data once the project is ready to begin its ILP. Before filing the NOI and PAD is the optimal time to engage agency or NGO partners.

Based on your experiences and the stages of the ILP you’ve become familiar with, do you think the ILP is on the right track of reducing cost and increasing efficiency?

- There is an increased willingness to participate and that willingness is having a good effect on the process. There has been extraordinary commitment by FERC and from agencies and NGOs to invest in a new process.

- The structured process provides good guidance and clear expectations with a way to meet them. The key is to have everyone engaged and dedicated, which does have added costs. Agencies and other stakeholders have staffing costs, but knowing what is expected can be built into work plans.
- In response to an audience comment that the main difference between processes would be to seek settlement, a Commission representative stated that the ILP does not disregard the goal of settlement. Another significant goal is to process things in a timely manner.
- The ILP has worked well on the smaller pioneer projects, but when looking forward toward relicensing a large system with no pre-existing relationships and no data, its effectiveness is uncertain. The absolute time crunch of tasks, complexity of issues, stakeholders, and need for studies may require 10 years of preparation rather than one or two for large projects.

Audience Comments

- Some projects require a tremendous amount of time, money, and effort, and that state agencies do not receive as much assistance from FERC as federal agencies. If the states were recompensed for these, the ILP would move along much more smoothly and agencies wouldn't always have to be looking for more resources.