

these cases to completion.<sup>15</sup> The Commission staff also held regional workshops with states on how better to integrate Commission licensing processes with the states' Clean Water Act responsibilities.<sup>16</sup>

15. Federal agencies have also worked cooperatively on several efforts to improve the licensing process. For example, the staff of the Commission, the Departments of the Interior, Commerce, Agriculture, and Energy, the Council on Environmental Quality, and the Environmental Protection Agency formed an Interagency Task Force to Improve Hydroelectric Licensing Processes (ITF). The ITF's efforts resulted in a series of commitments and administrative actions intended to make the licensing process more efficient and timely.<sup>17</sup>

16. More recently, in July of 2001, senior managers from the Commission staff and other Federal agencies formed the Interagency Hydropower Committee (IHC) to build on the commitments developed by the ITF and to develop additional procedural modifications that would further improve the efficiency and timing of licensing while maintaining environmental protections. The IHC developed a proposal for an integrated licensing process. Another integrated licensing process proposal was developed and circulated for comment by the National Review Group (NRG), a multi-stakeholder forum consisting of representatives from industry and non-governmental organizations (NGOs).

17. One reform concept that shows particular promise is a licensing process that integrates an applicant's pre-filing consultation with resource agencies, Indian tribes, and the public with the Commission staff's NEPA scoping (integrated process). Such an approach could differ from the ALP in several respects, such as ensuring the Commission staff involvement at all stages, establishing deadlines for all participants, providing a more effective vehicle for study dispute resolution than currently exists, and better integrating the Commission staff actions with the actions of other Federal agencies with statutory roles under the FPA.

### C. The Instant Proceeding

18. On September 12, 2002, the Commission and the Federal agencies with mandatory conditioning authority under FPA sections 4(e) and 18 commenced this proceeding by issuing a notice requesting comments in response to a series of questions concerning the need for a new licensing process, how an integrated process might best be implemented, and establishing a series of regional public and tribal forums to discuss issues and proposals associated with establishing a new licensing process.<sup>18</sup>

19. Following the regional forums and submission of written comments in early December 2002, the Commission conducted public drafting sessions on December 10–12, 2002, in which discussion of the results of the regional forums and comments was followed by a broadly-based collaborative effort to develop consensus recommendations on an integrated licensing process and, where possible, develop preliminary draft regulatory text.

20. Following the December drafting sessions, the Commission staff and staff from the Federal agencies with mandatory conditioning authority held additional discussion and drafting sessions.

21. The Commission appreciates the active participation and deliberate and thoughtful comments provided by the industry representatives, Federal and state resource agencies, Indian tribes, and members of the public in this proceeding. The provisions of the proposed rule, discussed below, attempt to fully take into consideration the interests of all of the stakeholders and to propose an integrated licensing process that will serve the public interest.<sup>19</sup>

22. Following the issuance of this notice, and prior to the due date for comments, the Commission will conduct additional regional stakeholder workshops to seek consensus on final rule language. The schedule for these workshops may be viewed on the hydroelectric page of the Commission's website.

## III. Discussion

### A. Need for a New Integrated Process

23. The fundamental issue in this proceeding is whether the Commission, by adopting a new licensing process, can make significant progress toward the goal of more efficient and timely licensing procedures, while ensuring environmental protection.<sup>20</sup> Many commenters from across the spectrum of interests think a new process can achieve these goals.<sup>21</sup> Many also support the adoption of an integrated process, subject to various recommendations.<sup>22</sup>

24. Others assert that there is no need for an integrated licensing process distinct from the traditional process if the Commission takes the most beneficial aspects of such a process and incorporates them into the traditional process, or believe that a new untested process is unlikely to result in greater efficiency.<sup>23</sup>

25. Many factors can cause delays in licensing. These include multiple applications for projects in the same watershed; Failure to resolve during pre-filing consultation disagreements over requests for the applicant to gather information or conduct studies; requests for extensions of time, including extensions of time for Federal agencies to provide mandatory conditions pursuant to FPA section 4(e) and

<sup>20</sup> Commenters raised many issues that exceed the Commission's jurisdiction or are beyond the scope of this rulemaking, including dispersed decisional authority in the statutory scheme, minimum terms for licenses, our policy on decommissioning of hydroelectric projects, annual charges for the use of Federal lands, and the Mandatory Conditions Review Policy of the Departments of the Interior and Commerce. These matters should be addressed elsewhere.

<sup>21</sup> E.g., Ameren/UE, RAW, HRC; NHA; NRG, AmRivers, Oregon, Washington, APT, Oregon, Kleinschmidt, Michigan DNR, C-WRC, CDWR, Menominee, WYGF, NHDES, Wisconsin DNR, California, Interior, NCWRC, WPPD, NYSDEC, Long View, Southern, Maryland DNR, NMFS, CRITFC, ADF&G, PG&E.

<sup>22</sup> E.g., NHA, HRC, NRG, Kleinschmidt, Michigan DNR, C-WRC, Menominee, WYGF, NHDES, KT, OWRB, Wisconsin DNR, Interior, EEI, PG&E, HETTF, PCWA, NCWRC, WPPD, NYSDEC, Southern, Caddo, Xcel, NMFS, CRITFC, California, NMFS, ADF&G, Oregon, CDWR, PG&E. The NHA version of an integrated process actually encompasses two different tracks, one of which features pre-application study development and NEPA scoping, and the other of which features post-application additional information and NEPA scoping. Only the first track would be considered an integrated process as we have defined it.

<sup>23</sup> California, SCE, Idaho Power, EEI. California and SCE both proposed modified traditional process models, which they characterize as integrated processes. The California process does not fully integrate NEPA scoping with study plan development, but does feature pre-filing NEPA scoping. Wisconsin DNR and Oregon endorse California's version of the traditional process model.

<sup>15</sup> The Commission staff established Docket No. AD02-05 for the workshop proceeding. A number of entities have made filings in that proceeding with recommendations for improvements to the licensing process.

<sup>16</sup> Summaries of these workshops are on the Commission's Web site at [http://www.ferc.gov/hydro/docs/licensing\\_workshop\\_sched.htm](http://www.ferc.gov/hydro/docs/licensing_workshop_sched.htm).

<sup>17</sup> Reports issued by the ITF have been made public and are posted on the hydroelectric page of the Commission's Web site. See <http://www.ferc.gov/hydro/docs/interagency.htm>.

<sup>18</sup> 67 FR 58,739 (September 19, 2002). Public and Tribal forums were held in Milwaukee, Wisconsin; Atlanta, Georgia; the Commission's headquarters in Washington, DC; Bedford, New Hampshire; Sacramento, California; and Tacoma, Washington. Entities that made oral comments at the public and tribal forums or filed written comments in response to the September 12, 2002 notice are listed on Appendix A.

<sup>19</sup> For the convenience of commenters on the proposed rule, a redline/strikeout version of the affected regulatory text is being posted on the hydroelectric page of the Commission's Web site.