

educate their members on the existing licensing processes.³⁷

32. If there is to be more than one proceeding, some of these entities recommend that the ALP be the only alternative to the integrated process, and some suggest that it be modified to better encourage settlement agreements.³⁸ HRC requests that if the traditional process is retained, it be modified to incorporate important elements of an integrated process. NHDES and OWRB recommend that the ALP and traditional processes be retained until it is demonstrated that the integrated process works, at which point those process options would be eliminated.

33. We conclude that it is appropriate to retain the traditional process and ALP, but that the integrated process should be the default process. Commission approval would be required to use the traditional process, as is now required for the ALP.³⁹ We are persuaded that the concerns of the industry and others that the integrated process may not be appropriate for some proceedings are well-founded. The integrated process brings together in a compressed time frame consultation, studies, dispute resolution, NEPA scoping and document preparation, and water quality certification activities that are now conducted over a much longer time frame. This could pose undue difficulty for some licensees, particularly those operating small projects, and for the other participants, who may agree that the traditional process will work best. Other considerations in requesting the traditional process might include the degree of stakeholder support for that process, level of controversy concerning project impacts, and the degree to which relevant information already exists.

34. We are also not inclined to abandon the alternative process. It has a demonstrated track record of reducing license application processing times,⁴⁰ as well as fostering settlement agreements, which are commonly filed with the application itself.

35. We are mindful of concerns that the availability of three process alternatives could be a source of confusion for some participants. We conclude however that the benefit of having different processes that can be applied to differing circumstances

outweighs this concern. In this regard, we also note that the integrated process regulations have been crafted to show the steps clearly in sequence from beginning to end, and to be as self-contained (*i.e.*, with a minimum of cross-referencing to parts 4 and 16) as is practicable, given the complexity of the statutory scheme. We are also proposing to require any applicant seeking permission to use the traditional process or ALP to do so when the notification of intent to seek a license (NOI) is filed,⁴¹ so that all concerned will have a voice in the process selection and will know which process will apply to the proceeding from the very beginning.⁴²

36. We have also concluded that certain elements of the integrated process can be included in the existing traditional licensing process. These include full public participation in pre-filing consultation, mandatory, binding study dispute resolution, and elimination of post-application additional information requests for license applications. These are discussed below.⁴³

D. Key Issues and Goals for an Integrated Licensing Process

37. The September 12, 2002, notice requested comments on, among other things, what key issues in the licensing process need to be addressed and how a new process might be structured to resolve those key issues. The responses confirm that the notice correctly identified the key issues.

1. Early Identification of Issues and Study Needs

38. Nearly all commenters state that one key to reducing the length of the licensing process is for all concerned entities, including the Commission staff, to participate as early as possible, so that issues can be fully identified, study needs resolved, and necessary studies timely conducted.⁴⁴ Many also advise that a well-designed integrated process would improve the timing and development of mandatory terms and

conditions by fostering the early involvement of Federal and state agencies with such authorities so that needed information-gathering and studies are timely commenced and completed.⁴⁵

a. Advance Notification of License Expiration

39. The IHC proposed that three years prior to the deadline for an existing licensee to file notification of intent (NOI) to seek a new license the Commission staff would notify the licensee of the deadline and provide it with a list of basic information needs and resource agency and tribal contacts (advance notification of license expiration, or advance notification). Under the IHC proposal, the licensee would be encouraged to contact resource agencies, Indian tribes, and the public to begin identifying issues and collecting data. This early issue identification and data collection would help to ensure that the licensee files with its NOI a complete "Pre-Application Document,"⁴⁶ more fully described below, which would help to make effective integrated pre-filing consultation and early NEPA scoping.

40. The advance notification concept received much favorable comment.⁴⁷ All of the process proposals include some form of voluntary or required pre-NOI consultation.⁴⁸ Some proposals contemplate an advance notification followed by a pre-NOI meeting among the licensee, Commission staff and stakeholders.⁴⁹ NHA would also have the Commission staff directly contact Indian tribes to discuss licensing process options and initiate government-to-government consultation. Under the NHA and SCE proposals the license applicant would, following the public meeting, choose a licensing process.⁵⁰

41. Long View recommends that the Commission modify its regulations to allow existing licensees to file their NOI

⁴⁵ SCE, Oregon, Michigan DNR, HRC, NHDES, Wisconsin DNR, Interior, EEI, PG&E, PCWA, NCWR, WPPD Xcel, NMFS, PacifiCorp, Kleinschmidt, Idaho Power, NYSDEC, Maryland DNR, ADF&R, CRITFC, California.

⁴⁶ See proposed 18 CFR 5.4 (Pre-application document).

⁴⁷ NHA, APT, Oregon, Idaho Power, VANR, NHDES, HRC, SCE, Kleinschmidt, Menominee, EEI, BRB-LST, Southern.

⁴⁸ Voluntary pre-NOI consultation is contemplated in the NRG and PG&E proposals. Required consultation, at least to the extent of an initial informational meeting conducted by the Commission staff and existing licensee, is provided for in the NHA proposal.

⁴⁹ NHA, HRC, SCE.

⁵⁰ NHA and SCE apparently would not have the applicant's process choice subject to Commission approval.

³⁷ HRC, AmRivers, NYRU, NE FLOLW, AMC, BRB-LST, Menominee, VANR, KT, RAW, GLIFWC, Oregon, CRITFC, AMC, BRB-LST, Interior.

³⁸ RAW, Oregon, C-WRC, Menominee, VANR, Wisconsin DNR, DM&GLH, Domtar, FPL, AMC, AW, California.

³⁹ See 18 CFR 4.34(i).

⁴⁰ See 603 Report, pp. 29-54.

⁴¹ See proposed 18 CFR 5.3 (Notification of intent).

⁴² See proposed 18 CFR 5.1 (Applicability). As discussed below, we also propose to require a potential applicant for an original license to file an NOI.

⁴³ See Section III.F. We are also making certain other modifications applicable to all processes, such as including draft license articles with draft NEPA documents. See Section III.D.4.

⁴⁴ *E.g.*, EEI, PG&E, NRG, SCE, NHA, Michigan DNR, HRC, NYSDEC, Idaho Power, NF Rancheria, Caddo, ADK, AmRivers, AMC, APT, SCL, C-WRC, CDWR, Interior, PG&E, HETF, PCWA, APT, DM&GLH, Skancke, NYRU, Oregon, Wausau, Salish-Kootenai, HLRTC, PREPA, Kleinschmidt, Xcel, California, WPPD, RAW, GLIFWC, Virginia, CRITFC, NMFS, NHDES, VANR, Wisconsin DNR.