

public participation are discussed below.¹⁹²

6. Processing Schedules and Deadlines

150. Many commenters express the view that timeliness would be improved if the Commission established schedules and deadlines, including for itself, and ensured that the deadlines are firm to the extent possible.¹⁹³ Beyond that general principle, there is little agreement.

151. Licensees fault resource agencies for most delays and favor strict application of deadlines to the actions required of agencies, tribes, and the public, particularly the filing of recommendations and Federal agency mandatory conditions, on the basis that strict deadlines provide an incentive to timely participation.¹⁹⁴ Resource agency, Tribal, and NGO commenters identify tardy or incomplete filings (particularly studies) by licensees as the principal reason firm schedules and deadlines are needed.¹⁹⁵

152. Commenters from all camps favor the establishment of schedules and deadlines, with strict compliance required by others, but also agree that "default" or "generic" time frames need to be flexible to accommodate case-specific complicating factors and settlement agreements. There is also general agreement that the time frames in the IHC and NRG proposals, including the time period from NOI to filing of the license application, are too short, except for very simple cases.¹⁹⁶

153. There is broad agreement that improving outcomes is equal in importance to reducing licensing process time and expense, particularly where 30–50 year license terms are involved, and that strict adherence to schedules may compromise the development of study plans and the conduct of studies, hamper public or

Tribal participation, and be inconsistent with state water quality certification processes.¹⁹⁷ Various commenters similarly state that it is inappropriate to make assumptions concerning the number of field seasons required to compile data on current conditions or to complete other studies, because the time needed to obtain representative data may be affected by drought, ESA consultation, insufficient years of existing data where anadromous fish with multi-year return cycles are involved, and many other factors.¹⁹⁸ Others suggest that the time frames should be adjusted as necessary to accommodate instances where multi-project or basin-wide environmental analyses are necessary.¹⁹⁹

154. Commenters' perceptions of the nature of, and procedures for, study plan development and the conduct of studies also influence their perceptions of timeliness. HRC and RAW, for instance, appear to view these matters as a collaborative endeavor in which consensus is required. A number of agency, tribal, and public commenters similarly advocate that schedules in individual cases should be negotiated by the Commission staff with the stakeholders,²⁰⁰ or via agreements between the applicant and the parties.²⁰¹

155. In this connection, HRC states that NGOs with minimal staff are often trying to keep up with many projects in a region, so predictability of schedules and deadlines is an important tool for them to effectively allocate resources. It adds that the traditional process provides no advance warning of notices calling for comments, recommendations, responses to draft NEPA documents, and the like, which makes their task difficult. Some Indian tribes similarly state that they have very limited resources, and that tribal decisional hierarchies and communications channels may require longer to obtain a decision than in other organizations.²⁰²

156. The Commission agrees with the commenters that firm schedules and

deadlines are important to keep the licensing process moving, and also that there will be instances where a schedule or deadline will need to be revised. As of July 2002, the Commission's practice has been to publish a licensing schedule with each application tendering notice, and these schedules are updated periodically as required. The integrated process we are proposing also includes time frames for all critical process steps, from filing of the NOI to issuance of a license application, that will form the basis for development of case-specific detailed schedules.²⁰³

157. The elements of the proposed integrated process should make it easier to establish and maintain a timely schedule. Early issue identification and voluntary commencement of information-gathering are fostered by the advance notification of license expiration; Commission contact with potentially affected tribes; existing information, and process options; and the more complete informational requirements of the Pre-Application Document. Pre-filing consultation following the Applicant's NOI will be improved by full Commission staff and public participation; a Commission-approved study plan binding on the applicant which provides for interim review of study results; and a study dispute resolution process for agencies with mandatory conditioning authority. There would moreover be no opportunity after the application is filed for parties to request additional information or studies. Under these conditions, every interested entity has powerful incentives to timely participate.

158. We encourage all parties to consult in a collegial manner on the development of information and study plans (indeed, on all aspects of licensing). We are not however disposed to adopt a process, such as HRC appears to advocate, that relies almost entirely on consensus as the basis for approving a study plan and schedule. That approach would be incompatible with the three to three and one-half year time frame from the NOI to filing of the application, and would be certain to

¹⁹² See Section III.F.1.

¹⁹³ Ameren/UE, NHA, HLRTC, Ameren/UE, APT, SCE, AmRivers, HRC, NMFS, RAW, NRG, California, Wisconsin DNR, Interior, PG&E, NCWRC, Southern, Duke, C-WRC, WPPD, Wyoming.

¹⁹⁴ NHA, HLRTC, Ameren/UE, APT, SCE, Southern, Xcel. SCE states that the Commission should decline to accept late-filed study requests and establish an "extraordinary conditions" test for any study requests following the first field season of studies as incentives to timely agency action.

¹⁹⁵ California, Oregon, Michigan DNR, HRC, NMFS, NYSDEC, CRITFC.

¹⁹⁶ EEI, PG&E, HETF, HRC, NHA, EEI, SCE, Snohomish, Xcel, WPPD, California, Oregon, Michigan DNR, NYSDEC, CRITFC, WGRD, Catawba, Choctaw, GLIFWC, BRB-LST, Menominee, KT, Interior. PG&E states that when parties work together to identify issues and study plans, three years is sometimes not enough to go from early issue identification to a filed license application, and that a five year process is realistic only for a simple proceeding.

¹⁹⁷ E.g., Oregon, HRC, California, NW Indians, Menominee, NHA, Idaho Power.

¹⁹⁸ HRC, Wisconsin DNR, AmRivers, AMC, NMFS, NHDES, Menominee, GLIFWC, NMFS, Washington, Xcel.

¹⁹⁹ GLIFWC, Interior, NCWRC.

²⁰⁰ Ameren/UE, AmRivers, HRC, NMFS, RAW, DM&GLH, SCL, Washington, ADK, Michigan DNR. Some commenters recommend that the rules provide for a "default" time frame that would apply to simple, non-controversial applications that can be adjusted to accommodate water quality certifying agency data requirements or the complications posed by individual cases. HRC, Michigan DNR, Wisconsin DNR, PG&E, Washington.

²⁰¹ HRC.

²⁰² Catawba, Choctaw, Menominee.

²⁰³ Some commenters recommend that time be built into schedules to accommodate intra-agency appeals of Federal or state mandatory terms and conditions. APT, NHA, EEI. Our long-standing practice is to include final conditions in licenses and to reserve authority to modify the license depending if the licensee successfully appeals the conditions. See e.g., Southern California Edison Co., 77 FERC ¶ 61,313 (1996). That policy, which permits the licensee to seek extensions of time to comply with such conditions if the burden of interim compliance would be unduly onerous, recognizes the authority of the conditioning agency while protecting the interests of the licensee during the pendency of the appeal.