

the Commission's scoping pursuant to the National Environmental Policy Act (NEPA).¹ Highlights of this "integrated" process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;
- Opportunities for better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by study dispute resolution; and
- Issuance of public schedules.

3. In response to oral and written comments on the Notice of Proposed Rulemaking (NPR),² public drafting workshops, and additional consultations with other Federal agencies, the following significant modifications have been made to the integrated process in the final rule:

- The content and distribution requirements for the Pre-Application Document (PAD) have been changed to make it less burdensome on potential applicants and easier for recipients to use;
- More time has been provided for potential applicants and participants to develop and informally resolve differences concerning study needs;
- A technical conference open to all participants has been added to the formal dispute resolution process;
- The draft license application has been replaced by a less burdensome "Preliminary Licensing Proposal";
- The deadline for filing a water quality certification application has been extended to 60 days after the ready for environmental analysis notice;
- The integrated process will become the default process in two years; in the interim license applicants may choose the integrated process or the traditional process as it is currently constituted; and
- We are withdrawing our proposal to permit a cooperating agency for NEPA document preparation to also intervene in the relevant proceeding.

We believe that the changes we are adopting will significantly improve the integrated licensing process.

4. We also proposed in the NPR to modify the traditional process by increasing public participation in pre-filing consultation, adding mandatory, binding dispute resolution, and extending the deadline for filing an application for water quality certification. We have decided not to include mandatory, binding pre-filing dispute resolution, but are adopting the other proposals.³

5. To improve consultation with Indian tribes, we are establishing the position of tribal liaison, providing in the regulations for a meeting between the Commission and interested Indian tribes at the beginning of the licensing process, and issuing simultaneously with this final rule a Tribal Consultation Policy applicable to the hydroelectric, gas, and electric programs.

6. No changes will be made to the alternative licensing procedures (ALP).

7. The Commission appreciates the active participation and thoughtful comments provided by the industry representatives, Federal and state resource agencies, Indian tribes, and members of the public in this proceeding. We believe the provisions of the final rule, discussed below, fully take into consideration the interests of all of the stakeholders and will establish an integrated licensing process that serves the public interest.

II. Background

8. The background of this proceeding was set forth in detail in the NPR, and need not be repeated here. Since the NPR was issued on February 21, 2003, the Commission has held public and tribal regional workshops to hear and consider stakeholder concerns about the proposed rule, and to find stakeholder consensus on recommendations to resolve those concerns.⁴ Written comments were due by April 21, 2003.⁵ Thereafter, we held a four-day stakeholder drafting session from April 29, 2003 to May 2, 2003, at Commission headquarters. At the stakeholder drafting sessions, participants were divided into four groups: Studies, Overall Process, Dispute Resolution,

and Tribal issues, with each group including members from all the major stakeholder groups. The goal of the drafting sessions was to develop consensus recommendations on final rule language.

9. Following the drafting sessions, the Commission staff held additional discussion and drafting sessions with other Federal agencies before preparing the final rule.

III. Discussion

A. Need for New Integrated Process Confirmed

10. Many commenters commended the Commission for undertaking the rulemaking and indicated that the proposed integrated licensing process holds strong promise of accomplishing its objectives.⁶ The commenters also provided hundreds of general and specific recommendations regarding how the proposed rule might be improved. After careful review of these comments, we affirm the need for the proposed rule and conclude that we should finalize it with certain modifications discussed below.

11. A few commenters⁷ question the need for an integrated process. They are not convinced that it will simplify matters or reduce the time needed for licensing, and think it is certain to be more expensive for license applicants. WPSR is disappointed that the rule does not resolve their concerns about the exercise by federal and state agencies of mandatory conditioning authority. WPSR adds that the integrated process will be overly burdensome for small projects and that the dispute resolution provisions and proposed change in the cooperating agencies policy unreasonably diminish the role of the applicant. SCE and Georgia DNR state that the objectives of the integrated process could be achieved by modifying the traditional process, the consensus-based ALP,⁸ or both.⁹ These concerns are addressed in the following pages.¹⁰

12. We are committed to making the integrated process a success. Potential applicants who choose this process during the transition period may rest assured that the Commission will

³ For the convenience of commenters on the proposed rule, a redline/strikeout version of the affected regulatory text will be posted on the hydroelectric page of the Commission's website.

⁴ The regional workshops were held in Portland, Oregon; Sacramento, California; Charlotte, North Carolina; Manchester, New Hampshire; Milwaukee, Wisconsin; and Washington, D.C.

⁵ Entities that filed comments in response to the NPR are listed in the Appendix to the preamble. For administrative ease, the commenters' names are abbreviated in the preamble, as indicated on the Appendix. On April 21, 2003, the California Public Utilities Commission filed a notice of intervention. However, rulemaking proceedings do not have parties.

⁶ Virginia DEQ, WGA, WPPD, Interior, PCWA, EPA, Advisory Council, VANR, WPPD, Alabama Power, AmRivers, PG&E, Long View, NHA.

⁷ SCE, NEU, Xcel, Georgia DNR

⁸ See 18 CFR 4.34(i).

⁹ SCE's detailed recommendations for improvements to the traditional process are discussed in Section III.T.

¹⁰ Some commenters, such as WPSR, state that the rulemaking should have focused on a perceived unreasonable exercise of authority by agencies with mandatory conditioning authority. As we explained in the NPR, this is a matter that should be addressed elsewhere.

¹ 42 U.S.C. 4321, *et seq.*

² 68 FR 13988 (Mar. 21, 2003); IV FERC Stats. & Regs. ¶32,568 (Feb. 20, 2003).