

the PAD prior to 5.5 years before license expiration.<sup>19</sup> They reiterate that the FPA requires only that the NOI be filed no later than five years before the license expires and that some cases simply take longer. They cite the diversity of stakeholder interests, development of complex study plans, and unpreventable gaps between approval of a study plan and commencement of studies owing to seasonal considerations and the time needed to negotiate contracts with consultants. They state that adding three to six months at the front end will, in many cases, permit an additional field season of studies before the application deadline, thus increasing the likelihood that the application will be complete when filed. They stress that the goal should be to conclude the licensing proceeding and put into place improved terms and conditions before an existing license expires, and that maintaining an unrealistic time frame for commencing the process will result in the continued issuance of unnecessary annual licenses.<sup>20</sup>

25. NHA and Longview suggest that an alternative would be to permit the applicant to issue the PAD before the earliest date the NOI can be filed if resource agencies and stakeholders approve. They state however that this is much less desirable because stakeholders could decline to participate before the NOI is filed, forcing the potential applicant to repeat steps already completed with some stakeholders after the NOI is filed.

26. These advocates of commencing the licensing process before the NOI is issued are correct that some proceedings will exceed 5.5 years, notwithstanding the best efforts of all participants. They base their comments however on experience under the traditional process, which lacks the crucial features of the integrated process designed to minimize delays. If all stakeholders work together in good faith, the integrated process should minimize the number of instances where a new license application proceeding cannot

be concluded before the existing license expires by integrating pre-filing consultation and development of the Commission's NEPA document and resolving study disputes early in the process.

## 2. Advance Notice

27. In the NOPR we proposed to issue to licensees an advance notice of license expiration. This would be done sufficiently in advance of the NOI deadline date to ensure that the existing licensee is alerted to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. We noted that because the advance notice is an administrative action which requires no action on the part of any other entity, and which will be undertaken regardless of the process selected, there is no need to include this action in the regulations.<sup>21</sup>

28. Some commenters state that the advance notice should be included in the regulations because it notifies stakeholders as well as the existing licensee. Barring that, some request publication of a written policy on when the notice will be issued and its contents.<sup>22</sup> Suggestions in this regard include reminding the licensee that seasonal study considerations may be relevant to timely application development<sup>23</sup> and giving directions to contact resource agencies and assemble a list of entities to be consulted and potential issues to address.<sup>24</sup> CHRC and Whitewater similarly recommend that the Commission issue public notice when the advance notice is issued.

29. There is no need to put the advance notice in the regulations. The Commission has for many years published in its annual report and annually in the **Federal Register** a table showing the projects for which the license will expire during the succeeding six years and providing essential information about each project's physical and geographical characteristics.<sup>25</sup> The Commission's annual report is posted on the Commission's Web site.

30. A written policy on the content of the notice would be superfluous. As stated above, the purpose of the notice is to alert licensees to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. These requirements are found in the regulations.

31. Recommendations for when the advance notice should be made range from one to three years before the NOI deadline date.<sup>26</sup> We intend to issue the notice approximately 1.5 years before the NOI deadline date. This should provide adequate time for existing licensees to make decisions concerning process selection and to gather existing information for the PAD.

## D. Process Selection

### 1. Default Process

32. The NOPR proposed to make the integrated process the default process. A potential applicant would have to request Commission approval to use the traditional process or ALP when it files the NOI and PAD.<sup>27</sup>

33. Licensee commenters question the need for a default process and Commission approval of the potential applicant's choice of the integrated and traditional process.<sup>28</sup> PG&E, SCE, and WUWC state that no rationale has been offered for eliminating the applicant's existing right to choose the traditional process and others say that applicants should not have to show good cause to use the traditional process because it has been tested and shown to be effective in many cases.<sup>29</sup> Licensee commenters also emphasize that the integrated process is untested, and that the ALP was formally adopted by the Commission only after several years of case-by-case experience based on requests for waiver of the of the traditional process requirements.

34. WPPD suggests that stakeholders will threaten to withhold support for the applicant's potential process proposal in order to pressure potential applicants into making other procedural or substantive concessions, and that there would be more certainty if potential applicants had unfettered process choice.

35. Several licensees state that the potential applicant has the most knowledge of the complexity, level of stakeholder involvement, and the resources available to itself and others, so the Commission should defer to its judgment.<sup>30</sup> Other reasons offered in support of applicant choice are that the applicant bears the cost of the process, a lack of choice will inhibit

<sup>19</sup> California, Long View, MWH, PG&E, VANR, MHW, NOAA Fisheries, Process Group. VANR states that the NOI deadline date should be moved to six years before the license expires.

<sup>20</sup> PG&E adds that in Order No. 513, Hydroelectric Licensing Regulations under the Federal Power Act, 54 FR at p. 31384 (June 2, 1989), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,854 (May 17, 1989), which promulgated the existing time frame for filing the NOI, the Commission specifically encouraged pre-NOI consultation. The rule we are promulgating today does not discourage pre-NOI activity. Indeed, the PAD cannot be prepared without it. Rather, we are declining to require provisions that could be construed to require or encourage consultation before the NOI is filed.

<sup>21</sup> 68 FR at pp. 13992-993; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,700-701.

<sup>22</sup> NOAA, HRC, NHA, NEU, CRITFC, Interior, SCE.

<sup>23</sup> PG&E.

<sup>24</sup> Wisconsin DNR.

<sup>25</sup> See 18 CFR 16.3.

<sup>26</sup> Wisconsin DNR, SCE.

<sup>27</sup> 68 FR at pp. 13992, 14009; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

<sup>28</sup> Troutman, Snohomish, WPPD, Idaho Power, EEI, Alabama Power, Xcel, NEU, WUWC, SCE, NHA. No commenter appears to advocate a change in the requirements for use of the ALP, and the Process Group at the drafting sessions agreed that the existing criteria are satisfactory.

<sup>29</sup> WUWC, Snohomish, EEI, SCE.

<sup>30</sup> NHA, EEI, SCE, Long View, PG&E, B&B.