

licensing is uncontroversial.⁴⁸ Others factors identified by Washington and American Rivers for consideration include the potential for time savings, benefits to the environment, and public participation needs.⁴⁹

45. Regarding original license applications, Consumers contends that the traditional process is appropriate because there is likely to be little relevant data available, which will cause the information gathering and study period to be extended, which is incompatible with the compressed time frames of the integrated process. NOAA Fisheries states that the same circumstances cited by Consumers should bar an applicant from using the traditional process.

46. The Process Group agreed that the "good cause" standard is vague, but did not identify criteria that would favor or disfavor use of the traditional process. Instead, they identified various factors for the Director to consider in each case in light of the goal of a timely, well-informed decision that protects the public interest. These factors include:

- Project size;⁵⁰
- Characteristics of the river basin, including the presence or absence of other dams;⁵¹
- The likely level of controversy, including disputes over studies;
- The level of involvement and interest by resource agencies, any expressed intent on their part to exercise applicable mandatory conditioning authority, and the anticipated resource issues, including ESA;
- Whether there are tribal issues;
- The physical characteristics of the project and known biological impacts of project operations;
- Stakeholder and tribal views on process choice;⁵²
- Resource constraints on Commission staff and participants;
- Reasonableness of project costs;⁵³
- Whether the potential applicant has a history of positive or negative relationships with stakeholders and Indian tribes; and
- The amount and usefulness of existing, relevant information.

47. Although there was general agreement in the Process Group about which factors should be considered, this does not reflect a consensus on how the

high, but makes no specific recommendations in this regard.

⁴⁸ AW/FLOW.

⁴⁹ Washington, AmRivers.

⁵⁰ Also suggested by NF Rancheria and NPS.

⁵¹ Also suggested by Wisconsin DNR.

⁵² Also suggested by Washington and AmRivers.

⁵³ Also suggested by Washington, AmRivers, and PG&E.

factors should be considered. For instance, industry commenters tend to think small projects are better suited to the traditional process because they are likely to have fewer environmental impacts, be less controversial, and be less well able to bear the transaction costs of relicensing. Agencies, NGOs, and Indian tribes, tend to think project size is only coincidentally related to environmental impacts and controversy, and view transaction costs as a cost of doing business and a much lower concern than development of a complete record and improvements in environmental protection.

48. This fundamental difference of viewpoints leads us to conclude that the Process Group approach, somewhat modified, is the most sensible approach to this issue. We conclude that five factors are most likely to bear on whether use of the traditional process is appropriate. These are: (1) Likelihood of timely license issuance; (2) complexity of the resource issues; (3) level of anticipated controversy; (4) the amount of available information and potential for significant disputes over studies, and (5) the relative cost of the traditional process compared to the integrated process. The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request. In recognition of the uniqueness of licensing proceedings, participants who comment on requests to use the traditional process may identify other factors they think are pertinent to the proceeding in question.⁵⁴

3. Timing Issues

49. The NOPR proposed to require a potential applicant to serve a copy of its request, if any, to use the traditional process or ALP on all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding, and to give appropriate newspaper notice to the general public. Responses would be due to the Commission within 15 days.⁵⁵

50. Many commenters respond that this is insufficient time to respond on a matter of such importance.⁵⁶ We agree that additional time may be appropriate for this step because it relies in part on

newspaper notice and occurs at the commencement of the proceeding. Accordingly, we have increased the time allowed to respond to these requests to 30 days.

E. Pre-Application Document

51. The NOPR concluded that NEPA scoping will be greatly assisted by the availability to the participants of as much relevant existing information as possible when scoping begins. To this end, we proposed to supplant the current requirements for existing licensees to make project information available to the public when the NOI is filed, and for all potential license applicants to provide an initial consultation document (ICD) to consulted entities during first stage consultation, with the PAD.⁵⁷

52. The PAD should include all engineering, economic, and environmental information relevant to licensing the project that is reasonably available when the NOI is filed. It is a tool for identifying issues and information needs, including NEPA scoping, developing study requests and study plans, and providing information for the Commission's NEPA document. The PAD would be a precursor to Exhibit E, the environmental exhibit in the license application. In the integrated process, the PAD would evolve directly into a new Exhibit E that has the form and contents of an applicant-prepared draft NEPA document.⁵⁸

53. The PAD proposal was widely supported, and many comments were received concerning the appropriate contents, format, and distribution requirements.⁵⁹

1. In General

54. Industry commenters generally agree that the PAD is a good idea in principle, but that the requirements need to be significantly reduced to ensure that the contents are relevant to the licensing proceeding and useful to the participants. Some industry commenters believe the PAD requires significantly more information and a

⁵⁷ 68 FR at pp. 13993–994; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

⁵⁸ See proposed 18 CFR 5.16(b). Applicants using the traditional process would continue to use the existing Exhibit E in their license application, and applicants using the ALP could use the existing Exhibit E or file with their application in lieu thereof an applicant-prepared environmental analysis. As discussed in Section III.U.5, we are changing our policy to permit applicant using the traditional process to file an applicant-prepared environmental assessment.

⁵⁹ A great many specific recommendations regarding the detailed requirements of the PAD were filed. All of these have been considered, but it would be needless and impractical to discuss each comment individually.

⁵⁴ See 18 CFR 5.3(d)(1). PFMC states that this decision should be made by the Commission rather than delegated to the Office Director.

⁵⁵ Proposed 18 CFR 5.1(f).

⁵⁶ NPS, NYSDCE, Interior, AmRivers, Wisconsin DNR, Consumers.