

reasonably balance the competing interests of the participants.⁷⁷

F. NEPA Scoping and Study Plan Development

1. In General

77. Most commenters support having a Commission-approved study plan in the integrated process,⁷⁸ but many request clarifications of or modifications to the proposed study plan development process. Only Idaho Power objects to this feature. It asserts that the current study planning and dispute resolution provisions generally work well, and are less costly and labor-intensive than what is included in the integrated process. We do not dispute that there are instances where the current study planning and dispute resolution processes are adequate. They undeniably contribute in many cases however to the undue length of the licensing process by deferring identification and resolution of fundamental issues about what information gathering and studies are necessary until after the application is filed. The integrated process is designed to eliminate that problem.

78. HRC requests that we affirm that the purpose of an approved study plan is to develop a record that allows for the adequate evaluation of reasonable alternatives to mitigate ongoing impacts to resources from project operations, and not to prejudge potential mitigation measures. The purpose of an approved study plan is to bring, to the extent possible, pre-filing finality to the issue of what information gathering and studies will be required by the Commission to provide a sound evidentiary basis on which the Commission and other participants in the process can make recommendations and provide terms and conditions. The study plan is developed in conjunction with NEPA scoping, and the latter inevitably involves judgments about which potential alternatives are reasonable to consider, and which alternatives will be eliminated from detailed consideration. It therefore follows that the Commission-approved study plan will reflect those determinations.

79. Washington states that study requests should not be rejected merely because they do not employ generally accepted practices, because new

methodologies or techniques may be appropriate in some cases. We agree. As noted elsewhere, with the exception of the establishment of a nexus between the study request and operation of the project, no one criteria establishes a "litmus test" for study requests.

80. Georgia DNR states that study plans should be project-specific and that the study criteria should not be interpreted so as to mandate standard form study plans. We agree. Although we would expect specific study plans for projects with features identical or similar to one another to have the same or similar components, every project is likely to have unique features that need to be accounted for in the development of the study plan.

81. NYSDEC states that the unique aspects of individual projects make extrapolated data acceptable, if at all, only if it is technically infeasible to produce site-specific data. We do not agree with blanket assertions of this nature. We agree with Oregon that the appropriateness of extrapolated data is a decision properly made on a case-by-case and issue-by-issue basis.

82. Under the proposed rule, the NEPA scoping meeting and site visit would be followed by an opportunity for participants to make comments and preliminary study requests before the potential applicant files its draft study plan.⁷⁹ Interior would insert after the comments and preliminary study requests a six-month period for the participants to negotiate a mutually agreeable study plan. Interior reasons that this might permit elimination of the following steps up to the potential applicant filing a revised study plan for approval,⁸⁰ and thereby minimize the need for formal dispute resolution, eliminating as much as 200 days from the pre-filing process. PG&E and SCE think the proposed study plan development process is weighted too heavily toward notice and comment and not enough toward interaction between the participants. PG&E and SCE would also like to see more time for the participants to resolve their study differences. The Process Group agreed in general with these commenters that there should be more time in the process for such interaction.

83. As discussed below, we have modified the process to extend the time for participants to discuss the potential applicant's proposed study plan and to provide more flexibility concerning interactions during that period.⁸¹

2. Study Criteria

84. The NOPR proposed that an information-gathering or study request be required to address seven criteria:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.⁸²

a. General Comments

85. Commenters generally approved of the proposed study criteria subject to various recommendations for minor changes.⁸³ With the exception of issues concerning what consideration should be given to study costs, few had criterion-specific comments. Commenters also offered a variety of more general comments on how the study criteria should be applied. We consider the general comments first.

86. PG&E, SCE, and Duke request that we affirm in the preamble that the study criteria are not a check list; rather, they need to be considered as a whole, with each criterion addressed, and that no single criterion is determinative. The Studies Group agreed. We so stated in

⁷⁷ We cannot do away with the "library" requirement, as it is required by FPA Section 15(b)(2). In part 5, it appears at 18 CFR 5.2(a).

⁷⁸ E.g., NYSDEC, S-P, California, Interior, S-P states that approved study plans are needed to ensure confidential treatment of tribal cultural practices. This matter is addressed in Section III.N.

⁷⁹ Proposed 18 CFR 5.5 and 5.6.

⁸⁰ Interior refers to proposed 18 CFR 5.7 through 5.12.

⁸¹ See Section III.T below, and 18 CFR 5.12.

⁸² See proposed 18 CFR 5.10.

⁸³ VANR, Normandeau, HRC, NHA, Long View, Duke, PG&E, Advisory Council, Oregon. In contrast to the broad expression of support from all stakeholder perspectives, Minnesota DNR states that Criteria (2), (5), (6), and (7) are either exceedingly general or unduly specific and speculates that they were designed to obstruct or limit resource agency study requests.