

the NOPR,⁸⁴ and affirm that statement here.

87. Long View states that the preamble should clarify that requesters' desires for information must be tempered by practical considerations of relevancy, the value of the information sought in the context of the proceeding, and the complexity and effort required to obtain the information. NHA states that requesters should be required to explain the merits of their requests in the context of the case and the FPA. We think a practical application of the proposed criteria, with the minor modifications we are making in this rule, should result in the adoption of study requests that have merit, and the exclusion of those that do not. As we stated in the NOPR, "the * * * criteria implicitly require that study requests not be frivolous and add some appreciable evidentiary value to the record."⁸⁵

88. HRC asks us to clarify how ongoing environmental impacts will be considered in light of our policy that the baseline for environmental analysis is current conditions.⁸⁶ The study criteria should be applied in the same manner regardless of whether an impact from project operations on a resource is characterized as ongoing or otherwise. The requesting party would have to reasonably demonstrate the nexus between project operations and resource impacts and, in the context of addressing the other criteria, show how the proposed study reasonably relates to the development of potential mitigation or enhancement measures.

89. Duke wants us to emphasize that decisions on study requests will be consistent with Commission policy and practice. We think the regulation text is sufficiently clear in this regard.⁸⁷

90. The Advisory Council states that it would be helpful to include a more complete definition of what cultural resources studies are needed. The Advisory Council makes no specific suggestions in this connection, and we continue to believe that the best forum for determining appropriate data needs

and study requirements is in individual cases.

91. Oregon suggests, particularly in light of the time frames, that participants' study requests should only need to be general in nature, with the burden on potential applicants to produce detailed study plans. We disagree. As discussed below,⁸⁸ we have modified the process in response to comments by moving NEPA scoping, including the issuance of Scoping Document 1, to a place prior to the participants' submittal of their study requests. Under the revised process, these study requests should be as detailed as possible.

92. The NOPR states that judgment calls on study requests will be made "in light of the principle that the integrated licensing process should to the extent reasonably possible serve to establish an evidentiary record upon which the Commission and all agencies or Indian tribes with mandatory conditioning authority can carry out their responsibilities."⁸⁹ Duke states that this is inconsistent with a prior order in which Duke asserts that the Commission stated that it will not require data that other agencies deem necessary to support the exercise of their mandatory conditioning authority. In fact, in the order cited by Duke, *Curtis/Palmer Hydroelectric Company LP and International Paper Company*,⁹⁰ we merely restated our judicially affirmed position that the Commission has no statutory obligation to provide a record to support other agencies' decision making, or to require studies that it does not deem necessary to evaluate the public interest in light of the record evidence and argument provided by other parties.⁹¹ The principle underlying the integrated process expressed above is not inconsistent with that position.

93. No comments were filed on proposed criteria (1), (4), and (6). Comments on the other proposed criteria are considered below.

b. Criterion (2)

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

94. NYSDEC states that the relationship of a study request to agency management goals should not be the sole or even the primary measure of the

need for a study because agencies may request studies that do not relate directly to agency management objectives, but do relate to mandates established in law or regulation or derive from agency policy. A statement by an agency connecting its study request to a legal, regulatory, or policy mandate is, of course, entitled to appropriate consideration. Any requester should however appreciate that the more broadly stated the legal, regulatory, or policy mandate is, the more clearly the requester needs to explain how the mandate relates to the study request and, in turn, project impacts.

95. Massachusetts DER states that only a resource agency may appropriately determine what study requests apply to its management goals, so neither the Commission nor potential applicants should make determinations of applicability. As explained in the NOPR, the Commission does not intend to second guess the appropriateness or applicability of resource agency management goals.⁹² A requesting agency is required however to establish the connection, if any, between its study request and its management goals. In the great majority of cases, the connection should be obvious.

c. Criterion (3)

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

96. NYSDEC states that the requirement to explain relevant public interest considerations should also apply to agencies. It would be desirable for any entity requesting a study to explain how its study request relates to the public interest, but it should suffice for an agency requester to explain the connection of the study request to its resource management goals.

d. Criterion (5)

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

97. EEI requests us to state that a nexus between project operations and effects on the resource in question is a threshold requirement that must be demonstrated in every case.⁹³ This issue was discussed by the Studies Group, which agreed with EEI's request, as do we. Otherwise, the door would be open

⁸⁴ 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

⁸⁵ 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

⁸⁶ S-P and PFMC state that the environmental baseline for studies should be pre-project conditions. Georgia DNR states that pre-project baseline studies may be appropriate in some cases. SCE, Duke, and PG&E ask us to restate in the regulations our policy that the baseline is current conditions. We are not changing our well-established and judicially approved policy, and see no need for it to be written into our procedural regulations.

⁸⁷ See 18 CFR 5.14(l).

⁸⁸ See Section III.T and 18 CFR 5.8(c).

⁸⁹ 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

⁹⁰ 92 FERC ¶ 61,037 (2000).

⁹¹ 92 FERC at p. 61,089.

⁹² 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

⁹³ Duke and PG&E similarly state that the Commission should affirm that it will strictly apply this criterion.