

Using the Integrated Licensing Process: Lessons Learned

Hydro project owners share experiences and lessons learned from using the Federal Energy Regulatory Commission's integrated licensing process, the ILP.

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Owners and developers of 29 hydro projects are using the Federal Energy Regulatory Commission's integrated licensing process (ILP).¹ Nineteen of these are undergoing relicensing; nine are proposed new projects. And, in December 2007, PPL Montana's 11.3-MW Mystic Lake project became the first project to receive a license using the ILP. Table 1 on page 2 lists the projects and details about each.

The ILP became the Federal Energy Regulatory Commission's (FERC) default licensing process in July 2005. All hydro project owners applying for new licenses or renewing expiring licenses must use the ILP, unless the applicant receives FERC approval to use the traditional or alternative licensing processes.

The experiences and lessons learned from ILP users — from preparing to use the ILP to filing the license application — provide valuable insight for others who will be using the ILP in the future.

Getting prepared

Most applicants have found that prepar-

ing for the ILP is labor intensive. However, an examination of FERC regulations reveals that there is flexibility in implementing the ILP. Every licensing project is different — in size, complexity, location, resources issues, participant relationships, and the amount of participant experience. Applicants should investigate how the ILP can be tailored to fit each individual project. At the same time, it is helpful for applicants to review licensing documents from other project owners who are using the ILP. This will provide a sense of what is required and what others have done. Applicants say they have clearly gained efficiencies by drawing from the experiences of others.

One of the key tasks at this early stage is to educate participants. Some applicants hold outreach meetings to kick off the licensing process and to open the lines of communication. Workshops or other training programs designed to educate participants on project operations and the ILP (often with the help of FERC staff) also have proven successful. In addition to preparing participants, the training can build a solid foundation of participant understanding and solid working relationships among the parties. One applicant who waited to conduct such a workshop until later in the licensing process found that subsequent licensing issues stemmed largely from a limited understanding of project operations.

Another benefit of holding meetings and workshops before filing the notice of intent is that the applicant gains insight into participants' motivations and constraints. Not surprisingly, budget and resource limitations are common themes among agencies, Indian tribes,

and non-governmental organizations. For these reasons, some participants have resisted the quick time frames of the ILP, indicating they lack the staff and resources to thoroughly complete tasks within prescribed deadlines. Other participants have moved beyond their initial misgivings and ultimately come to view the accelerated process as efficient and a better use of their time than past licensing proceedings.

Applicants are also using plant tours and websites to educate and involve participants. Hosting a site visit at a hydro facility helps participants understand the project and operational issues. Another common tool is creation of a public website that contains licensing team documents. This, coupled with educating participants on how to use FERC's Internet e-filing and e-subscription services, allows participants to stay abreast of project activities and ensures timely filings.

FERC regulations require creation of a process plan and schedule, which lays out the ILP schedule from start to finish, consistent with the time frames established in the regulations. Many applicants recommend first creating the draft process plan and schedule with the FERC project coordinator. This will ensure compliance with FERC regulations. It also can help the applicant establish a relationship with the project coordinator, which can be an important factor in the applicant's success throughout the process. Applicants should let project coordinators know their ILP goals and expectations and make sure they understand FERC's expectations as well.

Next, applicants may want to go over the draft process plan and schedule with agencies and tribes and take suggestions on how to improve the plan. Applicants have been well-served by making certain agencies and tribes understand the tight time frames involved, as well as the fact that entering into disputes during the process only leads to more work for everyone and even tighter time

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Table 1: Projects Using FERC's Integrated Licensing Process

<i>Project Name, FERC Project Number</i>	<i>Capacity (MW)</i>	<i>Owner/Developer</i>	<i>Notice of Intent¹ Filing Date</i>
Bear River Narrows, 12486	11.0	Twin Lakes Canal Company	Dec. 15, 2006
Boundary, 2144	1,051.0	Seattle City Light	May 5, 2006
Brassua Project, 2615	4.2	FPL Energy Maine Hydro LLC Madison Paper Industries/ Merimil Ltd Partnership	March 29, 2007
Canaan, 7528	1.1	Public Service Company of New Hampshire	Aug. 2, 2004
Claytor, 739	75.0	Appalachian Power Company	Jan. 6, 2006
De Sabla-Centerville, 803	26.6	Pacific Gas and Electric Company	Oct. 4, 2004
Emeryville, 2850	3.5	Hampshire Paper Company	May 31, 2007
Falls Creek Dam, 12617	10.0	Northwest Power Services	Feb. 15, 2007
Green Island, 13	6.0	Green Island Power Authority	March 1, 2006
Henry M. Jackson, 2157	112.0	Snohomish County Public Utility District	Dec. 1, 2005
Lake Creek, 2594	4.5	Northern Lights, Inc.	May 31, 2006
Mahoning Creek, 12555	4.4	Mahoning Creek Hydro Company	Dec. 27, 2005
Mason Dam, 12686	3.0	Baker County	April 27, 2006
Massena Grasse River, 12607	2.5	Massena Electric Department	Dec. 8, 2006
McCloud-Pit, 2106	364.0	Pacific Gas and Electric Company	July 27, 2006
Metro, 12484	2.4	Advanced Hydro Solutions	May 5, 2005
Middle Fork, 2079	136.0	Placer County Water Agency	Dec. 17, 2007
Morgan Falls, 2237	16.8	Georgia Power	Jan. 15, 2004
Mystic Lake, 2301	11.3	PPL Montana	July 1, 2004
Natural Dam, 2851	1.0	Cellu-Tissue	April 13, 2007
Otter Creek, 2558	18.0	Vermont Marble Power	March 29, 2007
Packwood Lake, 2244	26.0	Energy Northwest	Nov. 10, 2004
Rock Creek, 12726	2.3	Eastern Oregon Light & Power Co., LLC	April 17, 2007
Scotland, 2662	2.0	First Light Hydrogenerating Co. (licensee)/Norwich Public Utilities (competing applications)	Aug. 30, 2007
Smith Mountain, 2210	636.0	Appalachian Power Company	Oct. 25, 2004
Tacoma, 12589/ Ames, 400 ²	8.1/ 3.5	Public Service Company of Colorado	May 20, 2005
Wailua Falls, 12534	6.6	Pacific Energy Resources LLC	June 19, 2007
Wells, 2149	774.0	Douglas County Public Utility District	Dec. 1, 2006
Willow Mill, 2985	0.5	MeadWestvaco	April 14, 2006

Notes

¹The notice of intent is a document filed with the Federal Energy Regulatory Commission, indicating the applicant's plan to seek an original, new, or subsequent operating license.

²These two projects are currently licensed as one project, 400.

frames. It should be pointed out that it will be easier for the agencies and tribes to meet their deadlines if they have researched the issues and come to meetings prepared to participate. Experience shows that participants appreciate the opportunity to provide input on the process plan and schedule.

Applicants recommend conducting consultation with agencies and tribes, including one-on-one meetings with

individual organizations, in advance of filing the notice of intent. Such early, targeted outreach may help applicants avoid difficulties due to what some have described as agencies or tribes being slow to identify interests. Such delay results in a heavier workload for everyone later in the process. Also, as one applicant phrased it, remember to “document, document, document.” Applicants recommend beginning to put

data and information received from agencies and tribes together in a clear format immediately, prior to beginning the ILP process. Doing so will inform discussions with participants at this early stage and also will save time, money, and frustration when assembling the preliminary application document (PAD).

Finally, while applicants emphasize the importance of being cooperative and involving participants in process planning, some also caution that applicants must be firm to avoid having the process “hijacked” by participants. One applicant describes its philosophy as endeavoring “to drive the timeline and process rather than to be driven.”

Developing the PAD: preliminary application document

Developing the PAD involves gathering existing information in order to convey what is already known about the project, its resources, and any project effects on those resources. Typically, a PAD includes a compilation of preliminary issues and, in some cases, initial study plans aimed at addressing those issues. Each PAD is different due to the range and complexity of issues involved and the availability of existing information. But, in every case, the PAD will serve as the framework for the licensing process.

Some using the ILP have taken several months to complete the PAD, while others have taken more than a year. Projects that are small or where little information exists about their surrounding areas will require less time developing the PAD. Projects that may need additional time include those large in size, located in areas that have been heavily studied, or with very active stakeholder groups. A year before the PAD was due, one applicant created a “Resource Summaries for Consultation Document” that consolidated known information. The applicant then brought this document to informal meetings with participants. This document was used to frame the issues, inform participants of the extent of existing information, and help applicant staff get up to speed on the resources.

Applicants have flexibility in formatting the PAD. However, following a format similar to that of an applicant-prepared environmental assessment will help in drafting future documents, including the preliminary licensing proposal, license application, and FERC's environmental document. The PAD is the ground work for the study plan, which largely will be based on the infor-



Bringing stakeholders to a project site can be an effective way to educate participants about project operations and the integrated licensing process and to build a solid foundation for future working relationships among the parties.

mation gathered while developing the PAD and during scoping.

Applicants are advised to “cast a wide net” and contact everyone who may have information that could be incorporated into the PAD. FERC has required at least one applicant to file an updated PAD or addendum to its PAD after determining that the applicant had not exercised due diligence in obtaining all existing information. FERC’s determination was based on the fact that the applicant did not contact many of the entities FERC believed were likely to have information. Some applicants have said that FERC can be effective in helping identify potential sources of information.

A few applicants voluntarily conducted preliminary studies as part of developing the PAD, but this has been the exception, not the rule. Applicants who have chosen to do so say it helped to have concrete, scientifically defensible study results to present to agencies and others in the ILP’s nascent stages, and that this shapes the licensing going forward. Nevertheless, such efforts should be considered carefully. Without a FERC-approved study plan, an applicant may have to duplicate efforts later in the process.

Some applicants have provided a draft PAD to FERC for review. FERC has been credited with turning the drafts around quickly and helping the applicant identify information gaps. Only one applicant is known to have distributed a draft PAD to participants for comment. Many applicants have expressed reservations about this approach; among the reservations is the amount of time it could add to PAD preparation. Overall, it

appears applicants believe it is best for the applicant to tightly control the PAD development stage.

Scoping document, meeting

In compliance with the National Environmental Policy Act (NEPA), FERC will issue a scoping document describing the issues identified, based on the PAD. At the scoping meeting, FERC staff will lead a discussion that includes project effects and issues, existing conditions, available information, resource management objectives, and information gaps.

At this point, applicants may want to call upon FERC to emphasize the defined purposes of scoping and the need for participants to engage in scoping rather than focus on study requests. FERC should be asked to make it clear when sufficient information exists to conduct the NEPA analysis and plainly state what the issues are and are not. Based on experience, applicants recommend that FERC emphasize participants must come prepared.

Developing the study plan

Development of the study plan is aimed at addressing issues identified in the PAD and during scoping and resolving disagreements over studies. Some applicants recommend holding outreach meetings between scoping and filing the proposed study plan, indicating such meetings were helpful in linking the two phases and identifying information gaps.

A few applicants recommend forming resource work groups at this stage to assist in drafting the plan and sharing data. Resource work groups bring

together technical experts, resource managers, and others with common interests. Some applicants indicate this can result in participants better managing their time. However, work group meetings must be planned in consultation with participants because many agencies and others are either responsible for, or have an interest in, multiple resources and may need to participate in multiple work groups.

Applicants have learned that participants want detailed study plan proposals. This came as a surprise to applicants who anticipated participants would want the opportunity to flesh out the studies. However, participants generally rejected this approach, some feeling that they were being asked to take on responsibilities that should lie with the applicant. Others simply felt it would be more time-efficient to respond to an applicant’s detailed study plans.

Another tool frequently used at study plan workshops and meetings is to bring in an outside facilitator to ensure meetings stay on track. Facilitators take into account the different perspectives of participants — based in part on their expectations, constraints, experience, and personality — and help the group reach consensus on the study plan. Applicants also report that participants appreciate having a neutral third party leading discussions.

Whether resource work groups are formed or participants attend all meetings together, developing the study plan can be an arduous task. The ILP’s collaborative study plan meeting — which helps clarify the applicant’s proposed study plan and any study requests — and any extra study plan meetings applicants hold have been described as “intense.” Applicants indicate this phase of the process requires a significant commitment of time and effort by all participants. However, some credited the limited time frame and firm deadlines for helping move the process along.

Applicants who have advanced into the later stages of ILP proceedings emphasize the critical role of FERC’s seven study criteria. (For a list of the criteria, see www.ferc.gov/industries/hydropower/gen-info/licensing/ilp/eff-eva/study-criteria.pdf.) Applicants recommend taking the time to ensure participants understand the criteria, realizing that educating participants on the criteria early can save applicants time and effort later. In evaluating studies requested by participants, FERC has strictly enforced ad-

herence to the criteria, with an emphasis on ensuring that there is a clear nexus between a study request and project effects. Similarly, applicants should be vigilant in evaluating participant study requests and be sure to document any arguments against adopting study requests as proposed. The record developed at this stage of the process will be instrumental in framing any subsequent negotiations with participants, including additional study requests and even settlement negotiations.

Most participant study requests appear to have been satisfied by the time applicants finalized their study plans. However, in some instances there have been additional study requests. In one of these instances, the applicant indicated that the same study requests initially rejected by FERC were resubmitted two different times later in the process.

Conducting studies

Some applicants conduct studies in one year, while others take additional years. Applicants recommend building in extra time for unexpected delaying factors, such as atypical weather or abnormal resource conditions. Once the studies are complete and study reports have been finalized, license application preparation begins.

Relicensing participants want to keep informed about the status of implementation of the study plan and receive the data and/or results as soon as possible. To address this, one ILP participant e-mails the relicensing participants a monthly schedule of planned field work for each study. The monthly field sched-

ule also is posted on the project website. Technical memos are issued as necessary to document decisions made as studies are implemented and present preliminary study data. These technical memos contain much of what will be included in the initial study report.

Completing the application

The license application includes proposed resource protection, mitigation, and enhancement measures developed with participants, and reflects the consultation conducted throughout the process. Time allotted between filing of the preliminary licensing proposal (PLP) or draft application and the final license application is minimal. For this reason, most applicants have chosen to put together a PLP rather than a draft license application because it requires less time and effort.

Due to the tight time frame, it is recommended that applicants draft an internal application preparation timeline that begins before submission of the PLP and actively manage drafting of the application to meet the compressed schedule. Applicants who have filed license applications using the ILP report that there have been minimal deficiencies and additional information requests and that applications are being accepted by FERC within a few months of filing.

To ease the filing burden for applicants using the ILP, FERC allows electronic filing of many documents. These include: initial and updated study reports, notice of request for formal dispute resolution, proposed and revised study plans, scoping comments and

study request, notice of intent, and pre-application document.

ILP for original projects

Many ILP users are preparing relicense applications. However, several ILP applicants are planning to construct new projects. These applicants typically receive preliminary permits to preserve their priority in pursuit of a license. To complete a license application within the three-year preliminary permit term, some applicants recommend frontloading as much of the ILP as possible, even before obtaining the preliminary permit. Other possibilities to help alleviate the tight deadlines include getting FERC's approval to use the traditional or alternative licensing process rather than the ILP,² or to complete long-term studies after filing the license application. ■

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¹As of December 2007.

²Layman, Steven R., Fred E. Springer, and David M. Moore, "Selecting a Licensing Process: Which Approach is Best for Your Project?" *Hydro Review*, Volume 25, No. 6, October 2006, pages 26-33.