

FERC LICENSING - PUBLIC PROCESSES

This paper outlines public processes applicable to two of FERC's licensing processes: the Alternative Licensing Process (ALP) and the Integrated Licensing Process (ILP). This paper does not outline public processes FERC uses in determining whether to approve a license application.

Exhibit A provides process flow charts for the ALP and ILP. Exhibit B provides a matrix comparing ALP and ILP. Both Exhibits are copied from documents on FERC's website.

1. Overview of processes.

- a. Both ALP and ILP include establishing groups of interested parties to participate in the licensing process (referred to as "stakeholders" in this paper). Stakeholders include state and federal resource agencies, tribal organizations, non-governmental organizations, and members of the public.
- b. FERC recommends that communication with stakeholders is critical, regardless of the process selected. In this regard, the applicant's approach and willingness to engage participants is key.
- c. ILP is the presumptive process; FERC must approve using another process.
- d. ALP is described as "collaborative" while ILP is described as "integrated."
- e. ILP "integrated" basically means that the licensing process is integrated with the environmental processes (e.g., NEPA, 401 permit - Clean Water Act, Endangered Species Act.) by FERC and other agencies.
- f. ILP is more regimented (see Exhibit A for detailed process), and has more specific time deadlines. ILP is front loaded; planning ahead and active participation are essential.
- g. ALP is collaborative. For example, the processes and deadlines are developed through collaboration with stakeholders. Communications protocols are established early in the process. Dispute resolution is collaborative; no decision maker if parties fail to reach agreement.
- h. While not imposed by the ILP process, FERC suggests that the applicant may implement open communication/collaborative protocols and other processes similar to ALP.
- i. ILP process gives more deference to state and federal resource agencies.
- j. FERC involvement with all stakeholders early and throughout the process is very helpful.

2. Activities before filing notice of intent and pre-application document (pre-application activity).

- a. FERC has expressed a willingness to participate in workshops and training sessions with stakeholders about the FERC licensing processes. A FERC staff report based upon inquiries made to stakeholders on the ILP suggests:

- i. Early workshops/training with FERC staff is invaluable to promoting meaningful public participation.
 - ii. FERC involvement early and throughout the process is very helpful.
- b. The applicant prepares a pre-application document (PAD) which gathers studies and starts organization for environmental processes (the PAD can be structured like an environmental assessment document). Stakeholder comments and participation is helpful.
 - i. The applicant gathers existing studies (“existing, relevant, and reasonably available information”), and requests stakeholders to provide additional studies and identify issues and resource management considerations
- c. Adopt information/communication protocols – how information will be made available.
 - i. Pre-application outreach meetings.
 - ii. A project website.
 - iii. Document distribution protocol.
 - iv. Perhaps, communication protocol

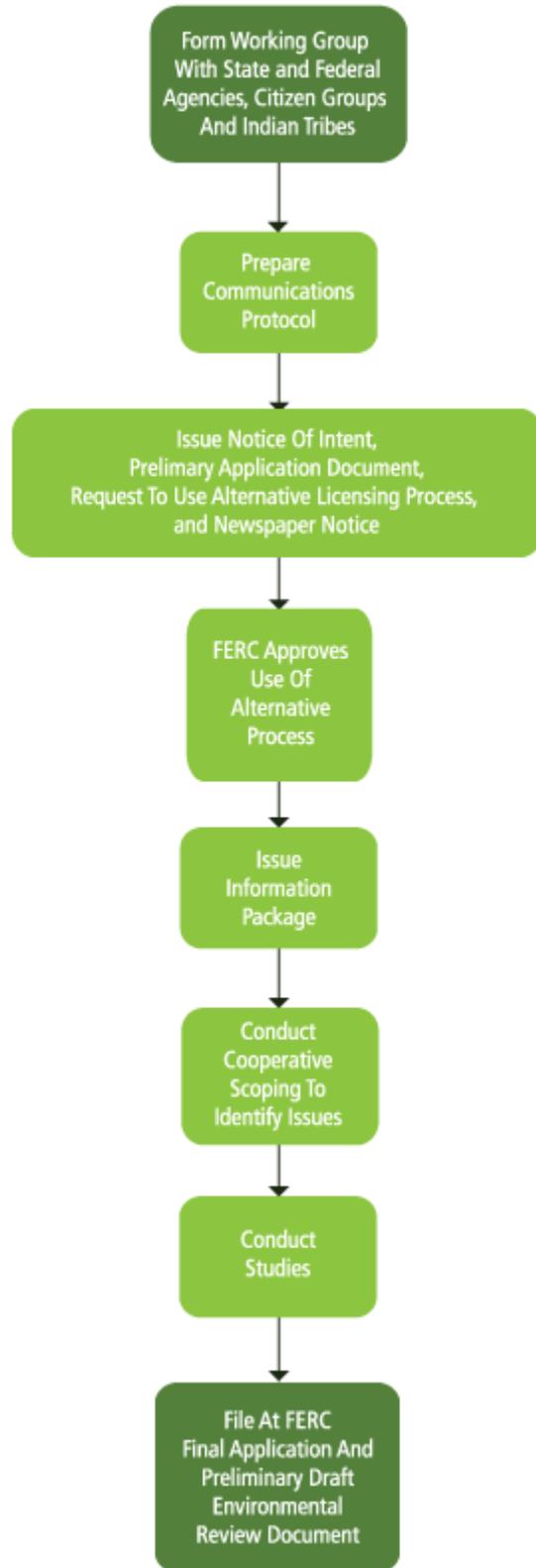
3. Activities before filing License Application (after notice of intent and PAD is filed).

- a. Scoping.
 - i. Scoping initiates FERC’s process to identify issues to be examined under NEPA. Scoping provides stakeholders an opportunity to review and discuss existing information and conditions, resource management objectives, issues, and the process plan and schedule.
 - ii. FERC holds scoping meetings with stakeholders.
- b. Study plan development and study plan requests.
 - i. Study plan development involves developing a detailed approach for filing information gaps needed to address issues and identify mitigation opportunities identified during consultation and scoping and for resolving disagreements over studies and study methods.
 - ii. Informal study plan workshops may be scheduled before the release of the proposed study plan.
 - iii. Stakeholders can review and request additional studies.
 - iv. Study plan meetings may be held to resolve disputes.
- c. FERC’s pre-environmental impact statement meetings with stakeholders.
- d. Preliminary licensing proposal.
 - i. Applicant under ILP process files preliminary license proposal 150 days before filing license application.
 - ii. Stakeholders given opportunity to comment.
 - iii. Agencies prepare draft terms and conditions for inclusion in License Application

EXHIBIT A

PROCESSES FOR HYDROPOWER LICENSES Alternative Licensing Process

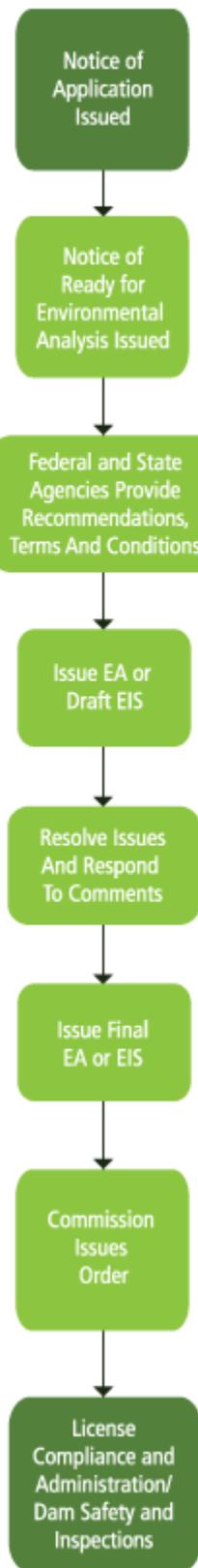
Applicant's Pre-Filing Process



PROCESSES FOR HYDROPOWER LICENSES

Alternative Licensing Process

FERC Application Process



Integrated Licensing Process

(Section 241 of the Energy Policy Act of 2005)

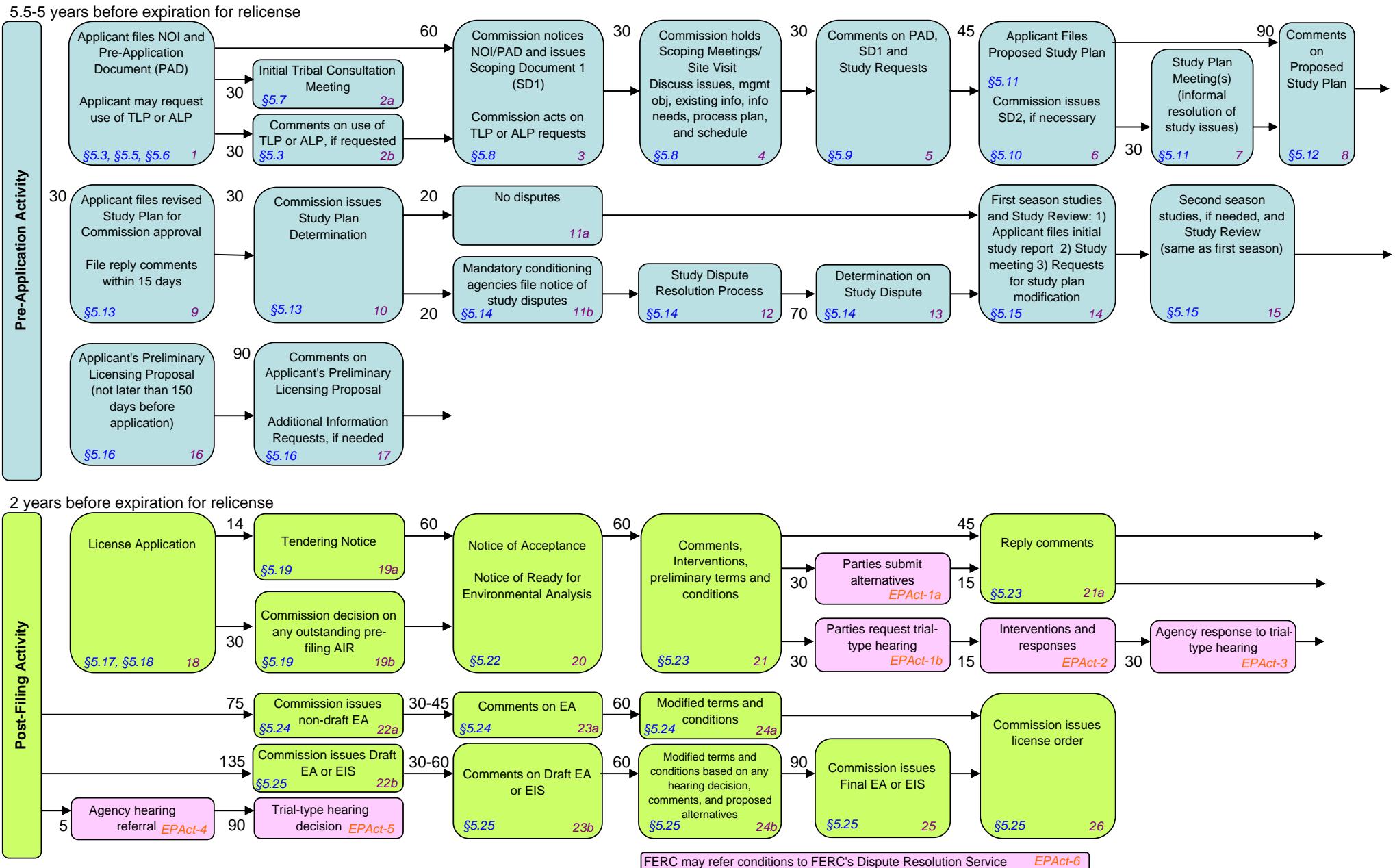


EXHIBIT B

Matrix Comparing Two Licensing Processes

	Integrated Licensing Process (ILP)	Alternative Licensing Process (ALP)
Consultation w/ Resource Agencies and Indian Tribes	- Integrated	- Collaborative
FERC Staff Involvement	<ul style="list-style-type: none"> - Pre-filing [beginning at filing of Notice of Intent (NOI)] - Early and throughout process 	<ul style="list-style-type: none"> - Pre-filing (beginning at filing the NOI) - Early involvement for National Environmental Policy Act (NEPA) scoping as requested
Deadlines	<ul style="list-style-type: none"> - Defined deadlines for all participants (including FERC) throughout the process 	<ul style="list-style-type: none"> - Pre-filing: deadlines defined by collaborative group - Post-filing: defined deadlines for participants
Study Plan Development	<ul style="list-style-type: none"> - Developed through study plan meetings with all stakeholders - Plan approved by FERC 	<ul style="list-style-type: none"> - Developed by collaborative group - FERC staff assist as resources allow
Study Dispute Resolution	<ul style="list-style-type: none"> - Informal dispute resolution available to all participants - Formal dispute resolution available to agencies with mandatory conditioning authority - Three-member panel provides technical recommendation on study dispute - OEP Director opinion binding on applicant 	<ul style="list-style-type: none"> - FERC study dispute resolution available upon request to agencies and affected tribes - OEP Director issues advisory opinion
Application	<ul style="list-style-type: none"> - Preliminary licensing proposal or draft application and final application include Exhibit E (environmental report) with form and contents of an EA 	<ul style="list-style-type: none"> - Draft and final application with applicant-prepared environmental assessment or third-party environmental impact statement

<p>Additional Information Requests</p>	<ul style="list-style-type: none"> - Available to participants before application filing - No additional information requests after application filing 	<ul style="list-style-type: none"> - Available to participants primarily before application filing - Post-filing requests available but should be limited due to collaborative approach
<p>Timing of Resource Agency Terms and Conditions</p>	<ul style="list-style-type: none"> - Preliminary terms and conditions filed 60 days after Ready for Environmental Analysis (REA) notice - Modified terms and conditions filed 60 days after comments on draft NEPA document 	<ul style="list-style-type: none"> - Preliminary terms and conditions filed 60 days after REA notice - Schedule for final terms and conditions

Document Copied from FERC Website by Department of Law on April 6, 2011