



# **Understanding the Study Criteria**

## *Integrated Licensing Process*

*Federal Energy Regulatory Commission  
Office of Energy Projects*

*April 6, 2005*

## Understanding the Study Criteria

Reaching agreement on study needs can be difficult and contentious. Historically, deferring resolution of fundamental issues about what information gathering and studies are necessary until after the license has been filed with the Commission has in some cases resulted in lengthy licensing proceedings. The Integrated Licensing Process (ILP) is designed to eliminate that problem. Working collaboratively with the hydro industry, state and federal resource agencies, tribes, and non-governmental organizations, the Commission developed seven criteria that must be addressed by parties requesting studies in the ILP. Following these criteria will help formulate a well structured and thought out request that can help focus discussions about the merits and applicability of a study to evaluate the effects of a project on environmental resources.

This document is intended to explain the study criteria and help stakeholders craft study requests (18 CFR § 5.9(b)) that will clearly identify their information needs and expectations and explain why they need the information. A clear understanding of the study criteria and adherence to these criteria in formulating study requests should facilitate the development of study plans (18 CFR § 5.11 (b)-(e)).

While the reader may wish to use the suggested structure as a template for a request, there are a number of variables that will determine whether a study or a totally different approach would be best suited to a particular project and approved by the Commission.

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## **Study Request Criteria**

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As specified by CFR 18, § 5.9(b) of FERC's regulations on the ILP, any study request must:

- (1) Describe the goals and objectives of each study proposal 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 a not 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, and how the study results would inform the development of license requirements;
- (6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and
- (7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

## Study Plan Criteria

CFR 18 § 5.11 (b)-(e) specifies the following requirements for the applicant's proposed study plan. Note that these requirements closely parallel those described in § 5.9(b).

(b) The potential applicant's proposed study plan must include with respect to each proposed study:

- (1) A detailed description of the study and the methodology to be used;
- (2) A schedule for conducting the study;
- (3) Provisions for periodic progress reports, including the manner and extent to which information will be shared; and sufficient time for technical review of the analysis and results; and
- (4) If the potential applicant does not adopt a requested study, an explanation of why the request was not adopted, with reference to the criteria set forth in § 5.9(b).

(c) The potential applicant's proposed study plan must also include provisions for the initial and updated study reports and meetings provided for in § 5.15.

(d) The applicant's proposed study plan must:

- (1) Describe the goals and objectives of each study proposal and the information to be obtained;
- (2) Address any known resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;
- (3) Describe existing information concerning the subject of the study proposal, and the need for additional information;
- (4) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;
- (5) 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 any known tribal interests;
- (6) Describe considerations of level of effort and cost, as applicable.

(e) The potential applicant's proposed study plan must be accompanied by a proposal for conducting a study plan meeting or meetings during the 90-day period provided for in § 5.12 for the purpose of clarifying the potential applicant's proposed study plan and any initial information gathering or study requests, and to resolve any outstanding issues with respect to the proposed study plan. The initial study plan meeting must be held no later than 30 days after the deadline date for filing of the potential applicant's proposed study plan.

## **Goals and Objectives**

§5.9(b)(1) Describe the goals and objectives of each study proposal and the information to be obtained;

This paragraph describes what the study is intended to accomplish, the goals and objectives of the study, and specific information to be obtained. The goals of the study should clearly relate to the need to evaluate the effects of the project on a particular resource. The objectives are the specific information needs to be gathered to allow achievement of the study goal. This section provides the context for why the study is being requested.

## **Relevant Resource Management Goals**

§5.9(b)(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;  
§5.9(b)(3) If the requester is a not resource agency, explain any relevant public interest considerations in regard to the proposed study;

This discussion should clearly establish the connection between the study request and the management goals of the requesting agency or tribe, or in the case of non-governmental agencies or others without a jurisdictional mandate or obligation, between the study and resource of interest. A statement by an agency connecting its study request to a legal, regulatory, or policy mandate is entitled to appropriate consideration. However, it is much easier to understand the relationship of an information need to a specific management goal than to broadly stated mandates established in law or regulation. Where such mandates are integral to the need for the information, the requester needs to thoroughly explain how the mandate relates to the study request and, in turn, project impacts.

## **Background and Existing Information**

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

The purpose of this discussion is to highlight the gap in existing data, giving full consideration to what has been provided in the PAD or is known from other information sources relevant to the project. This discussion should clearly explain why the existing information is inadequate and the need for additional information.

## **Project Nexus**

§5.9(b)(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

This discussion should clearly draw the connection between project operations and the effects (direct, indirect, and/or cumulative) on the applicable resource. Just as important, this discussion should explain how the requester will use the information to develop protection, mitigation, and enhancement measures, including those related to an agency's mandatory conditioning authority under 401 of the Clean Water Act or sections 4(e) and 18 of the Federal Power Act.

## **Proposed Methodology**

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

Study requests should be as detailed as possible. It is important to relay to the applicant your expectations on the scope and methods so that an adequate study plan can be developed. The requester may describe the proposed methodology by outlining specific methods to be implemented (e.g. study area, study sites, data collection methods, etc.) or simply by referencing an approved and established study protocol or methodology (e.g. Henderson 1999, or Missouri State Water Quality Sampling Protocols for Lead, 1999). If providing a detailed methodology, the requester should demonstrate how the requested methodology is consistent with generally accepted practice within the scientific community or, as appropriate, considers relevant tribal values and knowledge. The requested study must be generally accepted in the context of how it is being used. For example, just because an IFIM is a generally accepted methodology for determining the relationship of flow to available habitat, it doesn't mean you would use IFIM for answering questions about fish populations.

## **LEVEL OF EFFORT AND COST**

§5.9(b)(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

This section should describe your expectations of the level of effort and costs associated

with the development and implementation of the requested study. This would be used to provide the applicant with a better understanding of your expectations for the completion of the study. Within this section, you should also provide a justification as to why any proposed alternative studies would not be sufficient to meet the stated information needs. Proposed alternative studies could be studies being proposed by the applicant in the PAD or those being requested by other parties.



**Federal Energy  
Regulatory Commission**

**IMPLEMENTING THE  
INTEGRATED  
LICENSING PROCESS**

**Regional Training and  
Effectiveness Workshop  
2005**

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**Workshop Objectives**



- Overview of the ILP steps and procedures
- Share lessons learned
- Solicit feedback on the effectiveness of the ILP



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**Objectives of the  
Effectiveness Evaluation**



- The effectiveness evaluation is intended to:
  - Gather feedback on what is working well and what might be done better within the existing regulatory framework
- Process
  - Stakeholders Interviews
  - By-sector Focus Groups (Teleconference)
  - Regional Workshops
  - Technical conference
- Outcome
  - “Best Practices” Guidance Document

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# AGENDA



- ILP Overview
  - PAD and Process Plan Development
  - Scoping
  - Study Request and Study Plan Development
- Application Preparation and Processing
- Wrap-up and Upcoming Events

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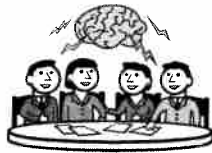
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# Ground Rules



- Please state your name and affiliation before speaking
- Programmatic level discussions—avoid project-specific merits
- De-personalize discussion of issues, no attacks on people
- We will not dwell on things that did not work in the past, but instead focus on the future




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# Purpose of the ILP



- To provide a predictable, efficient, and timely licensing process
- To continues to ensure appropriate resource protection




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# Fundamentals of the ILP



- Early study plan development
- Better coordination with other stakeholder processes
- Established time frames




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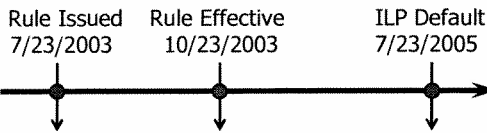
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# ILP Transition Timeline



Applicant Choice:

- TLP
- ALP (with approval)
- ILP

- PAD req. for TLP & ALP

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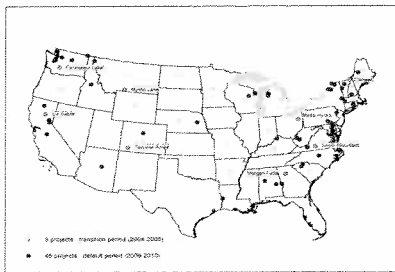
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# Projects Using The ILP 2004-2010




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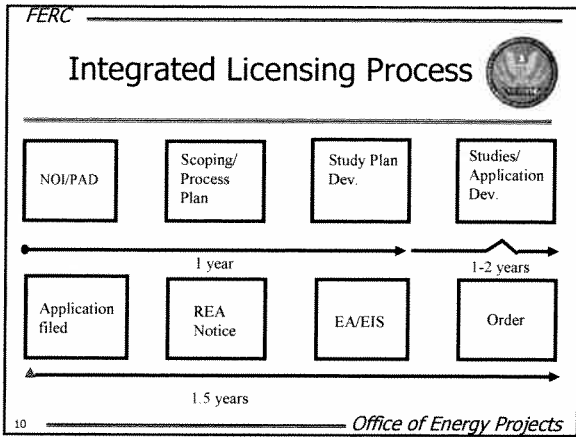
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## PRE-APPLICATION DOCUMENT DEVELOPMENT (The Regulations)



Casting a wide net

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## The Purpose of the PAD

- Brings together all existing, relevant, and reasonably available information
- Provides basis for identifying issues, data gaps, and study needs
- Forms the foundation of future documents
- Sets the schedule for the ILP



## Gathering Information



- Contact all relevant federal, state, and local agencies, tribes, and NGOs
  - Contact list on FERC web page ([www.ferc.gov](http://www.ferc.gov))
- Document your consultation efforts
- Do not have to conduct studies to gather information for the PAD

## Tribal Contacts



- FERC staff will begin identifying tribes about 1 year before NOI/PAD due date
- FERC staff will identify tribes in consultation with the applicant and stakeholders
- FERC Letter to each tribe inviting participation
- Meeting is held if appropriate

## Building the PAD



- Describe existing and proposed (if any) project facilities and operations
- Describe existing environment
- Describe known or potential environmental effects
- Include a process plan
- List preliminary issues and studies

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## Preliminary Issues & Studies List



- Foundation for scoping process
- Based on identified resources and effects
- Should be as comprehensive as possible
- Preliminary studies list should be as detailed as possible and should fill in information gaps needed to address issues

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## Process Plan - Goals



- Provides overall plan and schedule for licensing consistent with regulation time frames
- Helps stakeholders keep up with the process
- Integrates other stakeholder processes to the extent practicable
- Describes how information will be disseminated



### PRE-APPLICATION DOCUMENT DEVELOPMENT (Effectiveness Evaluation)



Stakeholder comments

## Stakeholder Comments



- Allow sufficient time to develop the PAD (depends on number of variables)
- Cast a wide net for stakeholders and information (don't assume all are involved)
- Early outreach and training help to establish relationships and improve stakeholder participation and understanding of the process steps and timeline

## Stakeholder Comments



- A project field trip may help stakeholders understand the issues and project layout
- A PAD questionnaire/survey can help guide and exhaust all potential information sources, but doesn't substitute for meetings
- Allow agencies and others enough time to identify and gather information for inclusion in the PAD

## Stakeholder Comments



- An organized and well-developed PAD is crucial to get the process off to the right start
- Format the PAD with the intention of using it as a working document and framework for the process; consider summary statements and using layman's terms to make it user-friendly
- The process plan is essential to keeping things moving; collaboration is useful in coordinating timelines and provides a sense of ownership

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## Stakeholder Comments



- Establish and maintain good lines of communication
  - A project website provides a convenient and consistent way to access information
  - Communication protocols and resource-specific advisory teams may be useful tools
- Carefully consider whether or not to conduct studies prior to filing the PAD

## Panel Discussion and Audience Feedback



### SCOPING (The Regulations)



Fishing for details; filling in the gaps

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## Purposes of Scoping



- Identify the issues
- Discuss existing conditions and information
- Explore additional information needs
- Discuss process plan

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## Roles At Scoping Meeting



- FERC's role: lead the discussion on the issues, study needs, and process plan
- Applicant's role: discuss existing environment/project operations, study proposals, and process plan
- Stakeholder's role: discuss issues and information gaps and process needs

### SCOPING (Effectiveness Evaluation)



Stakeholder Comments



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## Stakeholder Comments



- Stakeholder attendance and preparation varied among projects based on scope of issues and stakeholder familiarity with the project, the process, and the PAD
  - FERC/applicant should stress importance of scoping
  - Prepare for scoping by reading the PAD and other relevant documents
  - Stakeholders more likely to read user-friendly PADs
- Multiple locations and meeting dates accommodate greater participation
- Clearly state the purpose of scoping and stick to that agenda

## Panel Discussion and Audience Feedback



## STUDY REQUESTS AND STUDY PLAN DEVELOPMENT (The Regulations)



Sorting through the details to develop studies to address issues

## Study Plan Development Process



*Study Requests*

*Proposed Study Plan*

*Study Plan Meetings*

*Revised Study Plan*

*OEP Director's Study Plan Determination*

## Study Request Criteria



- Study goals and objectives clearly defined
- Studies answer resource goals and objectives
- Studies answer public interest considerations
- Consider existing information
- Nexus to project operations and effects and how study results would inform development of license requirements
- Methodology consistent with accepted practice
- Consideration of level of effort and cost and why alternative studies would not suffice

## Why are the study criteria important?



- Increased understanding of stakeholder information needs
- More focused studies
- Better study plans and more efficient use of time



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## Study Requests



Study Requests should:

- Address each criteria thoroughly
- Be as detailed as possible
- Clearly relate how the information to be gathered pertains directly to any mandatory conditioning authority under FPA section 4(e) or 18 or the Clean Water Act

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## Proposed Study Plan



- *Detailed* methodology and addresses study criteria
- Schedule
- Progress reports/study reports
- Rationale for not adopting a requested study

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## Applicant's Study Plan Meetings: Study definition and issue resolution



Informal resolution of study issues:

- Seek clarity of study goals, objectives, and methods
- Understand the criteria and explore issues and proposed studies with criteria in mind
- Plan for multiple meetings



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## Revised Study Plan



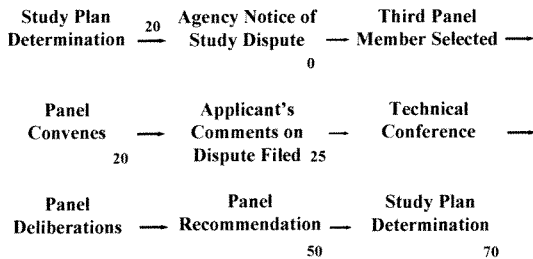
- Same components as proposed study plan
- Reflects efforts to resolve disagreements
- *More detailed* methodology
- Address all comments and requests

## Study Plan Determination



- OEP Director approves revised study plan, with any modifications
- Determinations based on the record

## Formal Study Dispute Resolution Process



## STUDY REQUESTS AND STUDY PLAN DEVELOPMENT (Effectiveness Evaluation)



Stakeholder comments

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### Stakeholder Comments



- Use the seven study criteria; they are helpful in defining, justifying and filtering out extraneous studies
- Stakeholders want to see greater detail in study plans, starting with the PAD
- Working collaboratively between scoping and filing the proposed study plan helped define data gaps and studies

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### Stakeholder Comments



- Resource working groups can provide feedback on the applicant's proposed studies, even prior to filing the PAD
- Workshops and study plan templates were useful tools

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## Panel Discussion and Audience Feedback



## Application Preparation and Processing (The Regulations)

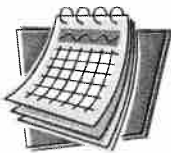


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### Progress Reports vs. Study Reports

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- Progress Reports
  - Schedule unique to each study
  - data distribution and review
- Initial and Updated Study Reports
  - end of 1<sup>st</sup> and 2<sup>nd</sup> yrs
  - overall progress in implementing study plan
  - necessary modifications or new studies

## Study Plan Modification



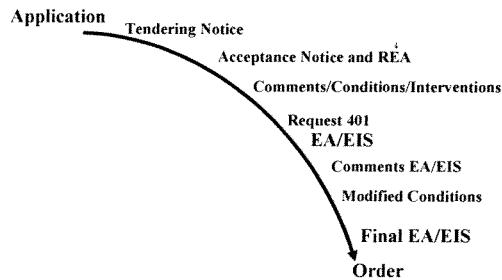
- Requests to modify ongoing studies must be accompanied by showing of good cause
  - Study not conducted as approved
  - Study conducted under anomalous conditions
- Requests for new studies
  - Threshold for new studies increases each year
  - Good cause (1<sup>st</sup> year)
  - Extraordinary circumstances (2<sup>nd</sup> and subsequent years)

## Preliminary Licensing Proposal



- Preliminary Licensing Proposal (PLP) due 150 days prior to license application due date
  - Existing and proposed facilities, operation, and environmental measures
  - Draft environmental analysis
- Draft license application optional
- Draft BA, EFH Assessment, and Historic Properties Management Plan
- Comments on PLP due within 90 days
- Waiver to file PLP can be requested

## Post-Filing Activity



## WRAP-UP



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### Take Home Points



- Cast a broad net for stakeholders and information
- An organized and well-developed PAD is crucial to get the process started off right
- Include stakeholders in the development of the process plan
- Come to scoping meetings prepared to discuss the issues

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### Take Home Points



- Address study request criteria thoroughly; be clear on how the study directly relates to any conditioning authority under FPA 4(e) or 18 or Clean Water Act 401
- Prepare detailed study proposals as early as possible
- Plan on multiple study plan meetings
- E-subscribe and E-file; use other resources on FERC's web page ([www.ferc.gov](http://www.ferc.gov))

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## FERC Outreach



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Effectiveness Technical Conference: June 23,  
11-3 (EST)

- FERC headquarters, Washington, DC
- Teleconference
- View on the web (Capital Connection)

"Best Practices" Guidance Document: Fall  
2005



## Questions

