

Establishing a state regulatory program for qualifying water-power development projects

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Regulatory Commission of Alaska

History of Water-Power Statute AS 42.45.350



History of Water-Power Statute AS 42.45.350

- 2/11/99 – Senator Frank H. Murkowski introduced a bill [S.422] entitled “A bill to provide for Alaska state jurisdiction over small hydroelectric projects”.
- 11/9/00 – The Federal Power Act was amended by adding section 32 [16 U.S.C. 823c] entitled “Alaska State Jurisdiction over Small Hydroelectric Projects”.

History of Water-Power Statute AS 42.45.350

- 3/13/01 – Senators Torgerson, Taylor, Austerman, and Cowdery introduced SB 140 entitled “An Act relating to regulation and licensing of certain water-power development projects; and providing for an effective date”.
- 1/31/03 – AS 42.45.350 became effective.
 - States that the RCA shall adopt regulations to establish a regulatory program for qualifying water-power development projects.

What could AS 42.45.350 mean to the State?

- State may be required to have provisions similar to 16 U.S.C. 797 (e) [Section 4(e)], 803 (j) [Section 10(j)], and 811 [Section 18].
- DNR and RCA estimated the combined cost of \$280,000 per year for implementation of a program.
 - The total cost of the program can not be determined until the program is designed.
- Will increase the work load of DEC, DF&G, DNR, and RCA.
- Existing State Statutes may not be equal to United States Codes [U.S.C.] which FERC operates under.
 - There are two attorneys from the Department of Law assisting.
 - To see if others agree, the questions found in the NOI was developed to assist us with theses issues.

Information on Alaska Hydropower

- FERC – 3 exemptions, 26 licenses [2 pending] and 5 preliminary permits.
- Alaska has 1/3 of the untapped hydropower potential of the US.
 - From the Alaska Rural Electric Cooperative Association at 3.21.01 SB 140 hearing.
- 1,144 potential hydro sites in Alaska; 602 sites <5 MW.
 - From the Locher Interests, 1997 Report for Alaska Energy Authority
- 131 sites are considered most viable.

Criteria for the 131 Most Viable Sites

- Adequate flow and head.
- Projects do not exist and site not being actively developed.
 - FERC has not received or issued NOI, preliminary permits, or license applications.
- Construction cost data developed.
- Project correct size for “*current*” market.
- No obvious land or environmental constraints.
 - National Park, Wildlife Refuge, or “Major” Salmon Stream

Qualifying Water-Power Development Projects

- Projects that are not part of a project licensed under 16 U.S.C 792 – 823c or exempted from licensing under 16 U.S.C. 792 – 823c or under 16 U.S.C. 2705 (sec. 405 of the Public Utility Regulatory Policies Act of 1978) before November 9, 2000.
- Projects for which the preliminary permit, a license application, or an application for an exemption from licensing has not been accepted for filing by FERC before November 9, 2000, unless the application is withdrawn at the election of the applicant.

Qualifying Water-Power Development Projects

- Projects that are part of a project that has a power capacity of 5,000 kilowatts (5 megawatts [MW]) or less.
- Projects that are located entirely within the boundaries of the state of Alaska.
- Projects that are not located in whole or part on an Alaskan Indian reservation, a conservation system unit as defined in 16 U.S.C. 3102 (sec. 102, Alaska National Interest Lands Conservation Act), or on a segment of a river designated for study for addition to the National Wild and Scenic Rivers Systems.

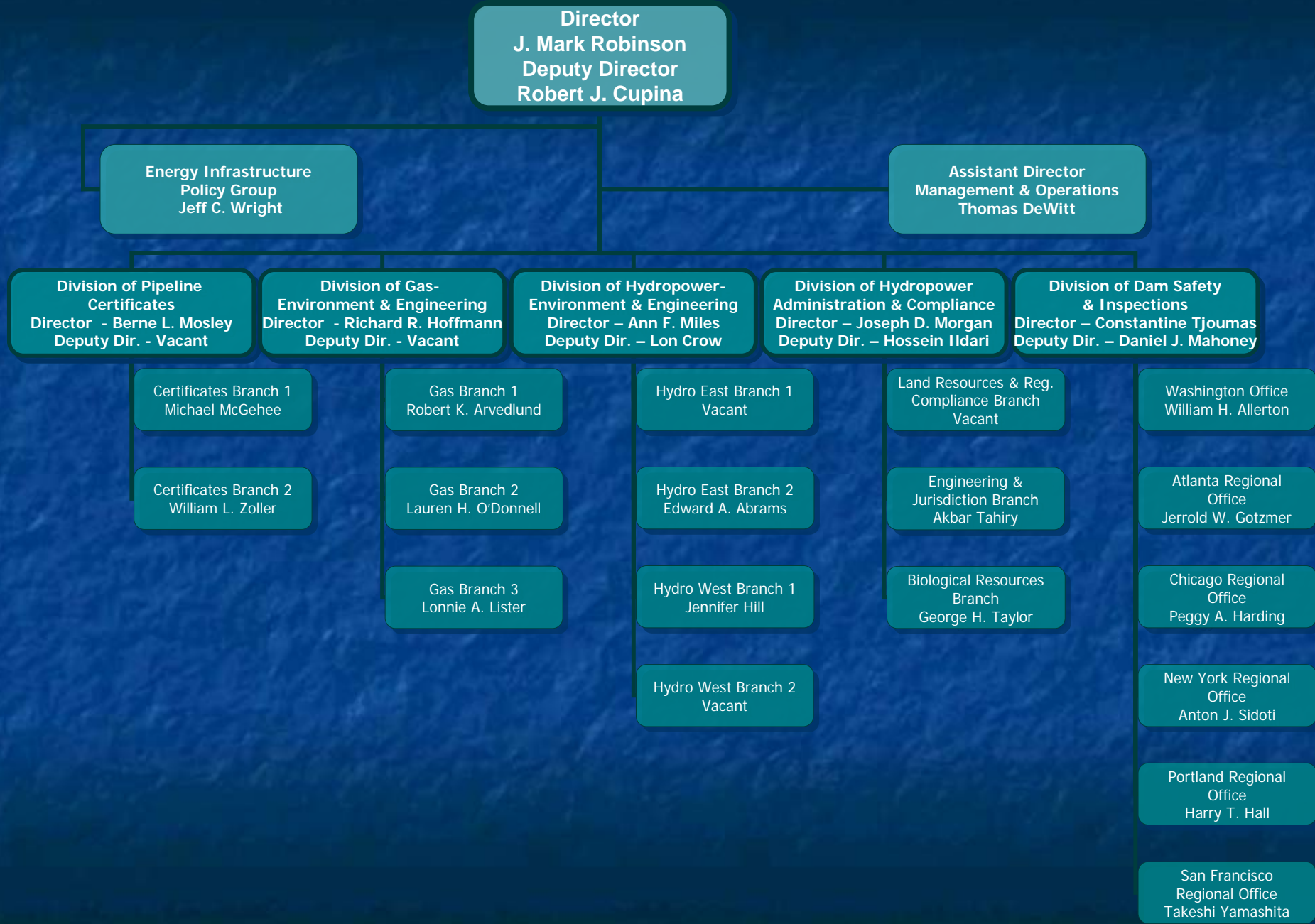
Qualifying Water-Power Development Projects

- In the case of nonqualifying project work that would be qualifying project work but for the fact that the project has been licensed or exempted from licensing by FERC before November 9, 2000, the licensee of the project may elect to make the project subject to licensing and regulations by the state.

FERC Licensing Process

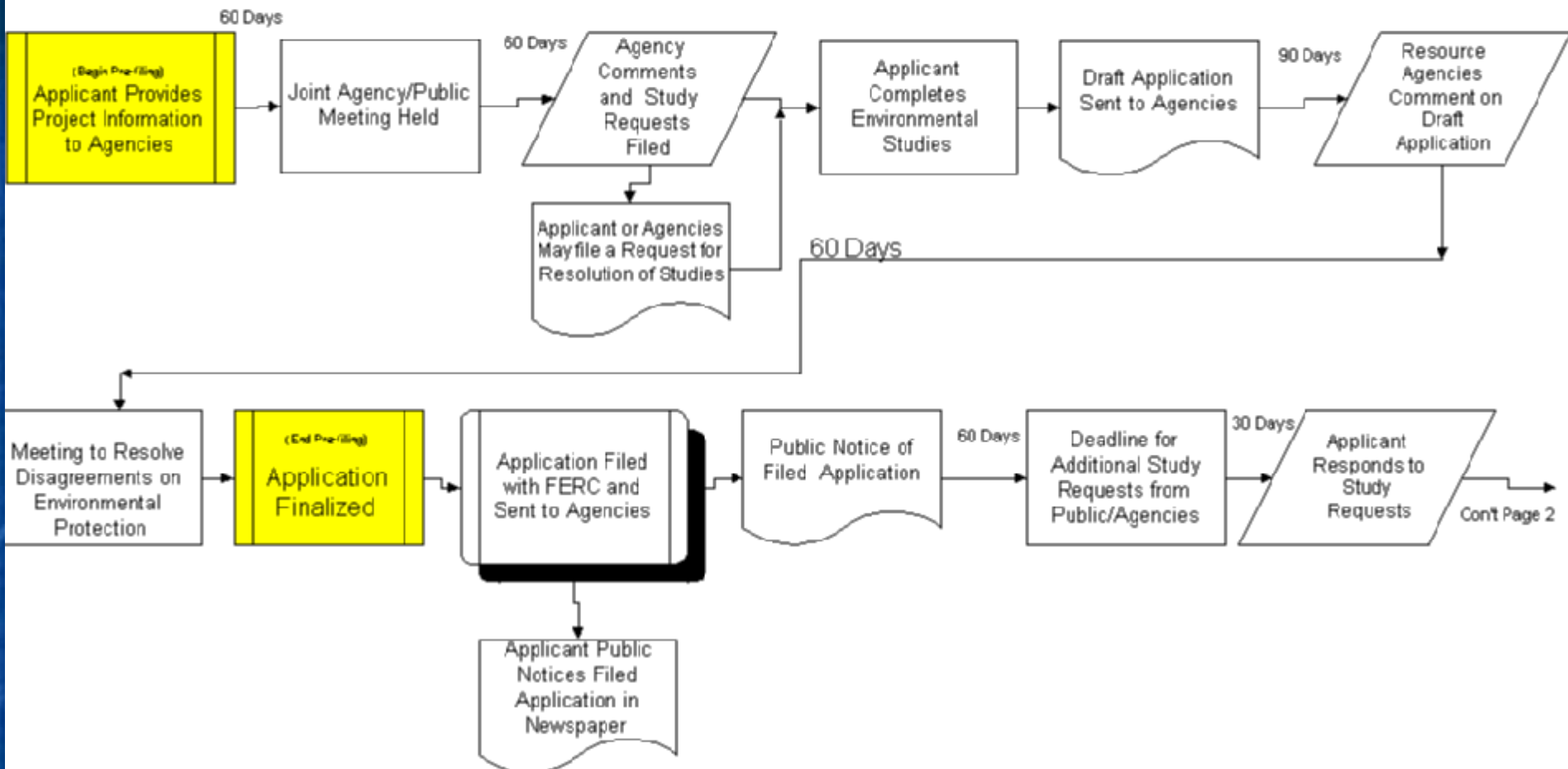


Office of Energy Projects

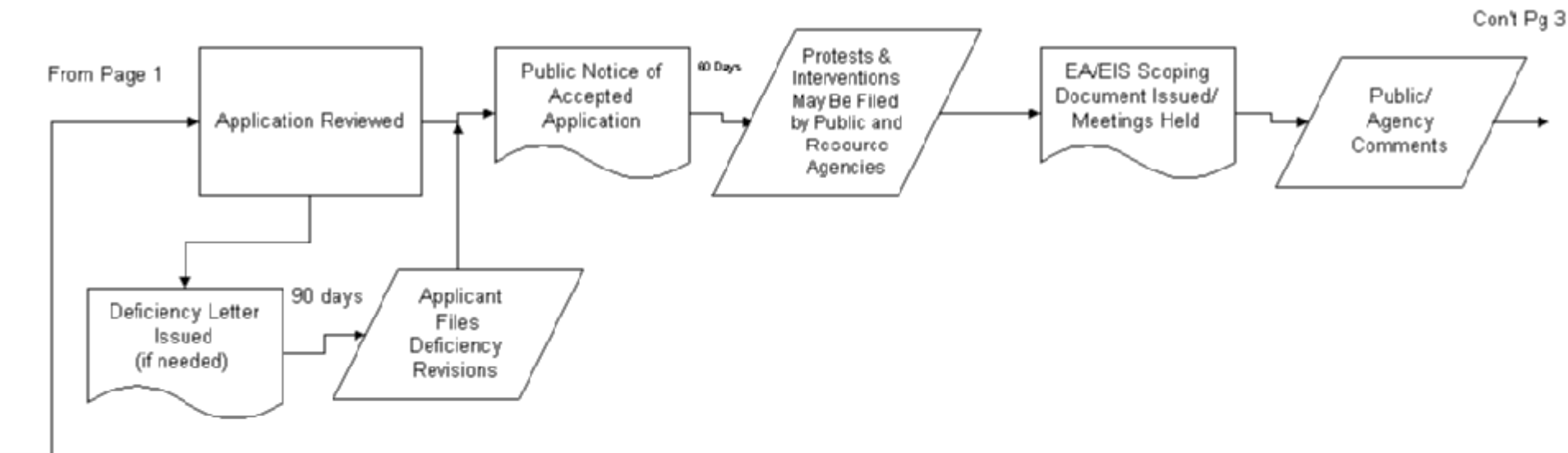


Licensing/Exemption Process - Traditional Approach

January 8, 1998

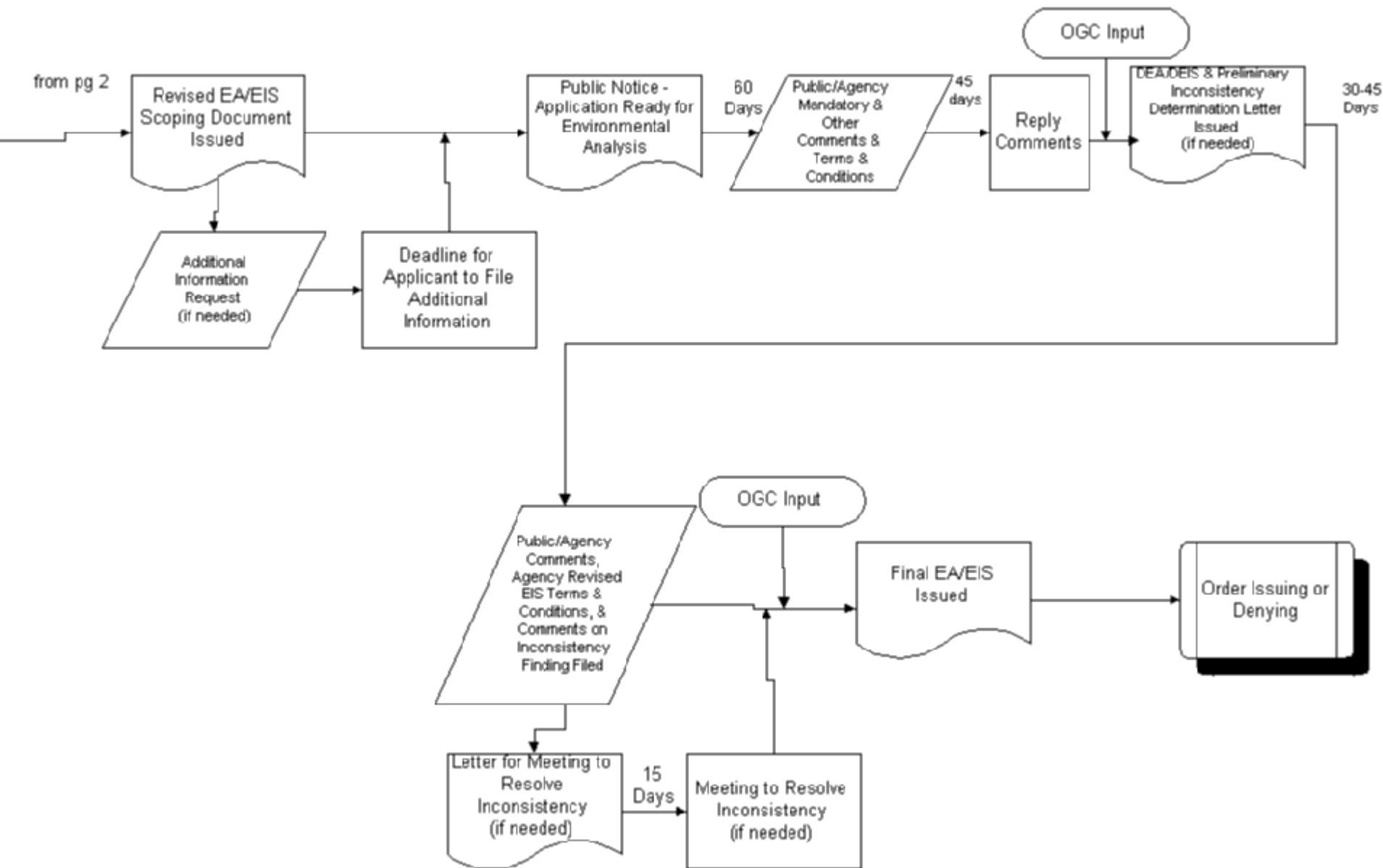


Licensing/Exemption Process - Traditional (page 2 of 3)



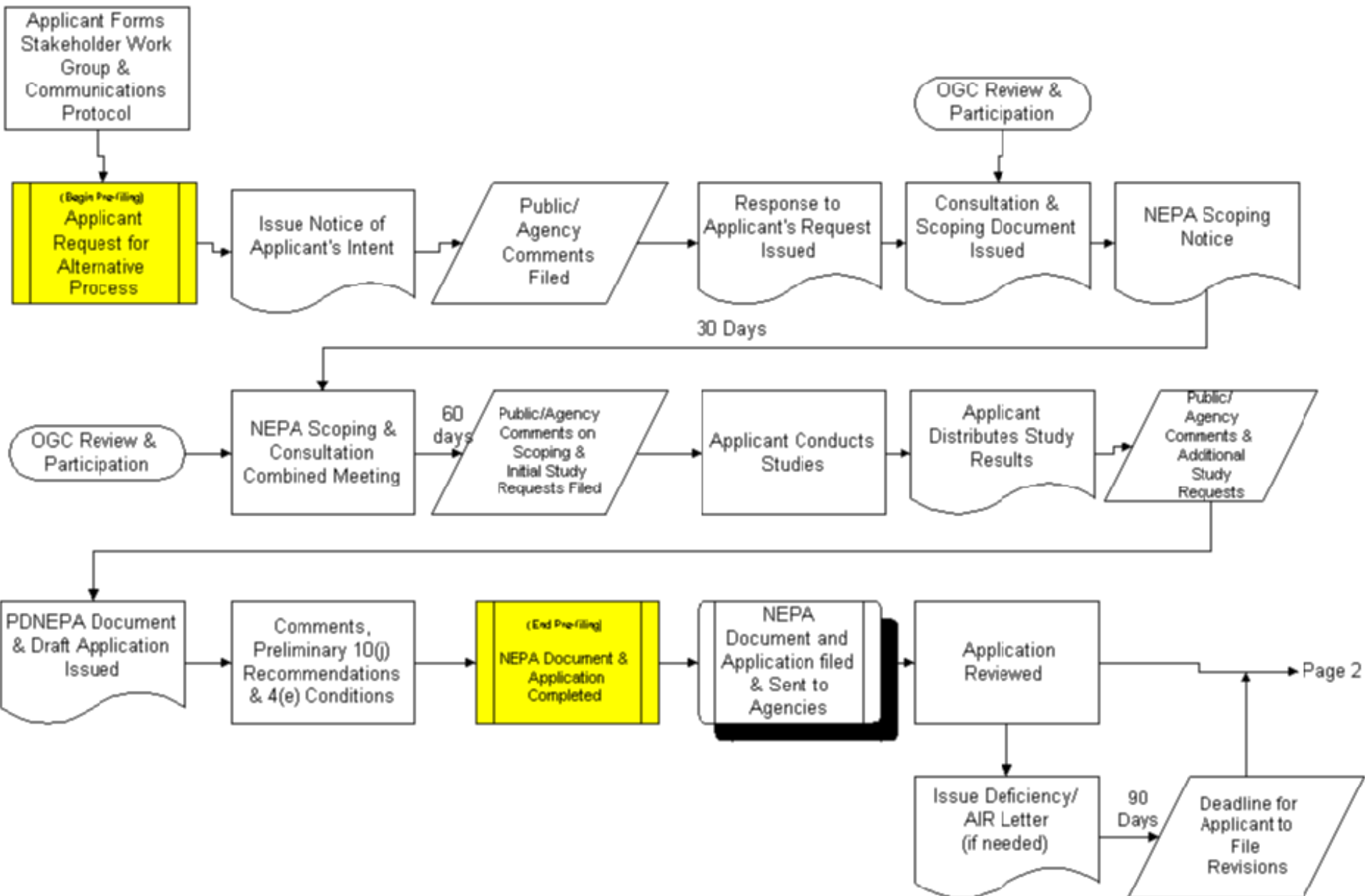
Conduit Exemptions Categorically Excluded from NEPA

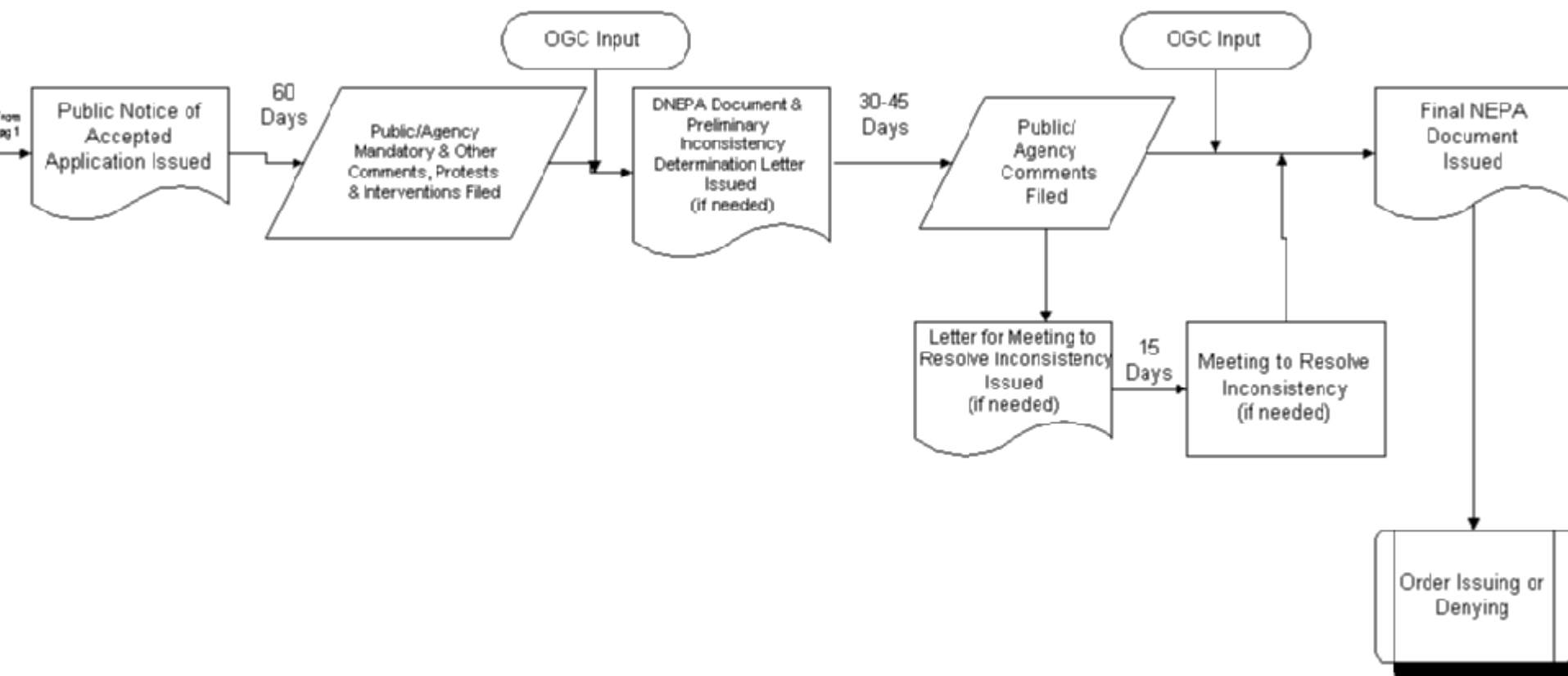
Licensing/Exemption Process - Traditional (page 3 of 3)



Licensing/Exemption Process - Alternative Approach

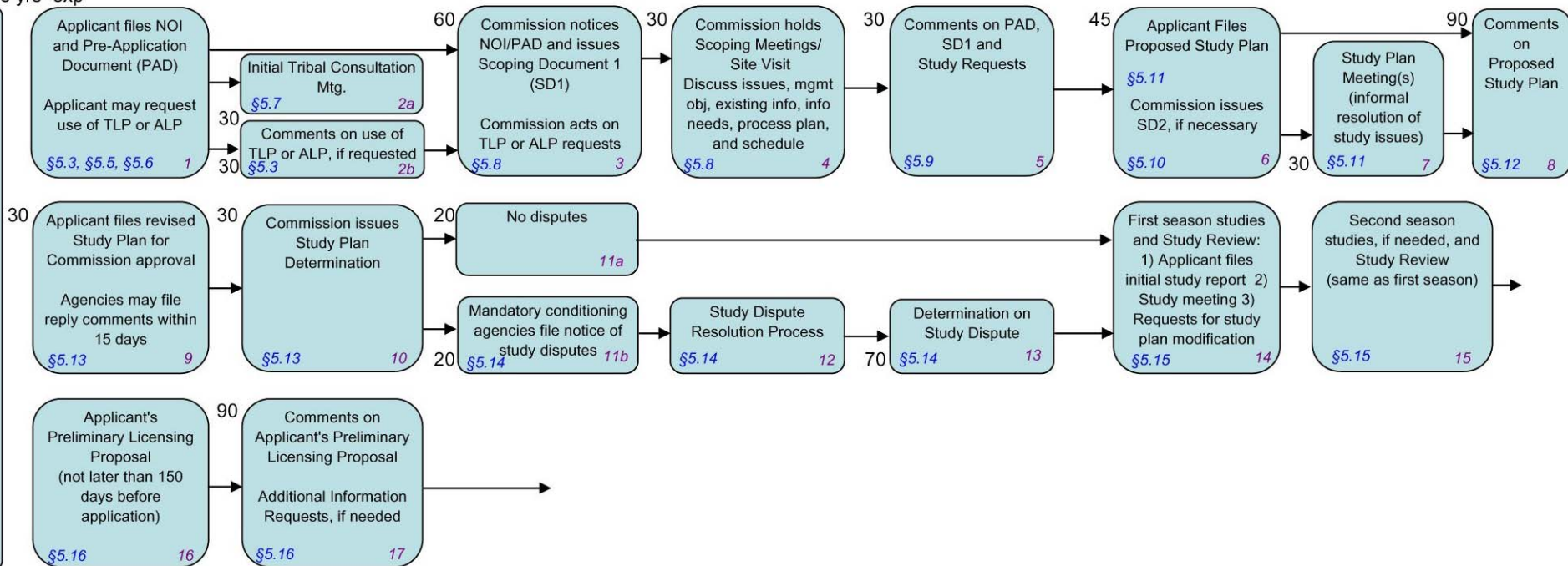
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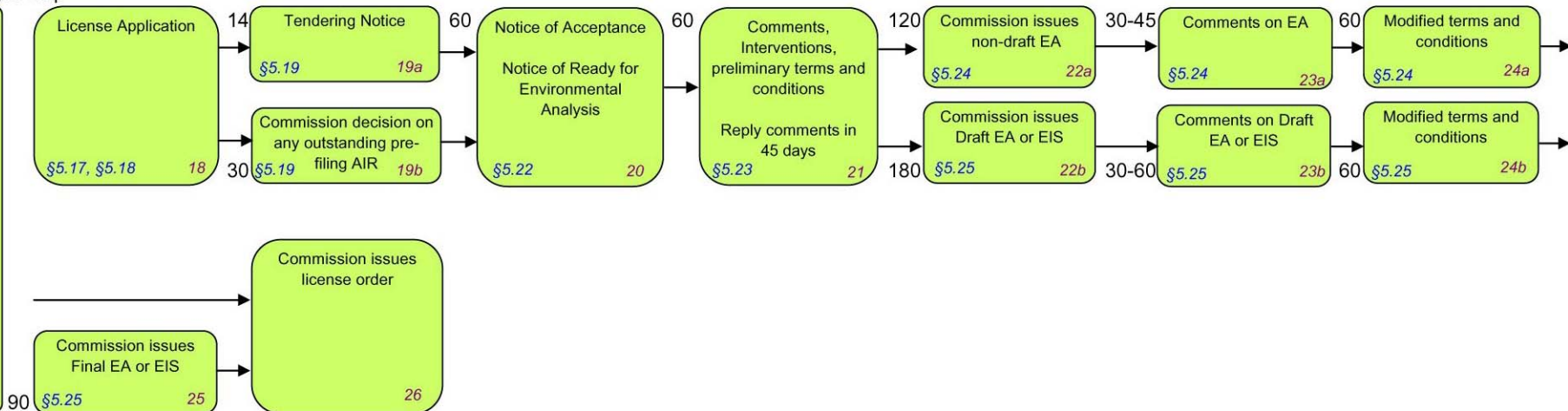
5.5-5 yrs<exp

Pre-Application Activity



2 yrs<exp

Post-Filing Activity



Issues covered by FERC during development of latest licensing process



Issues found in the Notice of Proposed Rulemaking

- Advance Notification of License Expiration
- Integrated Pre-Filing consultation with NEPA Scoping
- Study Plan Development
- Study Dispute Resolution Process
- Timing of Water Quality Certification Application
- Consultation with Indian Tribes
- Cooperating Agencies Policy
- Non-Decisional NEPA Documents
- Draft License Articles
- Endangered Species Act Consultation

Issues found in the Notice of Proposed Rulemaking

- Fish and Wildlife Agency Recommendations
- National Historic Preservation Act Consultation
- Public Participation
- Processing Schedules and Deadlines
- Settlement Agreements
- Flexibility in Processing Schedules
- Timing and Conduct of Settlement Negotiations
- Guidance on the Content of Settlement Agreements
- New and Original Licenses
- Competition for New Licenses

Issues found in the Notice of Proposed Rulemaking

- NOI, Process Schedule, Study Plan Development
- Conduct of Studies
- Draft Application to License Order
- Intervention by Federal and State Agencies
- Information Technology

Issues found in the Final Rule FERC Order # 2002

- Background
- Number of Processes
- Pre-NOI Activity
- Filing Date for NOI and PAD
- Advance Notice
- Pre-Application Document [PAD]
- PAD Contents, Format, and Distribution
- NEPA Scoping and Study Plan Development
- Study Criteria

Issues found in the Final Rule FERC Order # 2002

- Progress Reports and Initial and Updated Study Reports
- Modified Study Requests
- New Study Requests
- Comments on Study Reports
- Study Dispute Resolution
- Compliance with Study Plan
- Draft License Application
- Need for Draft Application
- Contents of Draft Application
- License Application

Issues found in the Final Rule FERC Order # 2002

- Post-Application Study Requests
- Consultation and Coordination with States
- Timing of Water Quality Certification Application
- Coastal Zone Management Act
- Tribal Issues
- Environmental Document Preparation
- Settlement Agreements
- Time Outs
- Original License Applications
- Competition for New License

Issues found in the Final Rule FERC Order # 2002

- Intervention by Federal and State Agencies
- Electronic Filing
- Additional Information Normally Requested
- Number of Paper Copies Per Filing
- Delegation of Authority
- Critical Energy Infrastructure Information

Important Issues that should be covered by a Potential State Program



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Alaska Division of Tourism

Issues to be Discussed during the Development of a State Program

- Notice of Intent [NOI]
- Pre-NOI Activity
- Pre-Application Document [PAD]
 - PAD Contents, Format, and Distribution
 - Additional Information Normally Requested
- Advance Notification of License Expiration
- Environmental Assessment Procedure [EAP]
 - Development of a State EAP
 - Integrated Pre-Filing Consultation

Issues to be Discussed during the Development of a State Program

- Study Plan Development
 - Study Criteria
 - Modified Study Requests
 - New Study Requests
 - Progress Reports and Initial and Updated Study Reports
 - Compliance with Study Plans
 - Use of RCA for Study Dispute Resolution
- Public Participation
- Consultation with resident Alaska Natives

Issues to be Discussed during the Development of a State Program

- Cooperating State Agencies Policy / Coordination
 - Fish and Game – Fish and Wildlife Coordination Act
 - Water Rights
 - Dam Safety Construction and Operation Approvals
 - Coastal Zone Management Act / ACMP
 - DNR, Fish Passage and Habitat Permits – Title 41
 - Office of History & Archaeology Alaska Historical Commission
 - State Land Use Issues
 - Division of Parks and Recreation
 - Water Quality Certification
 - Storm Water Issues
 - Wastewater Discharge Permits

Issues to be Discussed during the Development of a State Program

- Settlement Agreements
 - Timing and Conduct of Settlement Negotiations
 - Guidance on the Content of Settlement Agreements
 - Enforcement of Settlement Agreements
- Applications
 - Draft License Application
 - Final License Application
 - Additional Information Normally Requested

Issues to be Discussed during the Development of a State Program

■ Licenses

- New and Original Licenses
- Competition for New Licenses
- License Renewals
- Transfer of Licenses – Owner to Owner
- Transfer of Licenses – Federal to State
- Additional Information Normally Requested

■ Terms and Conditions found in a License

- Federal Agencies Recommendations
- State Agencies Recommendations
- Standard

Issues to be Discussed during the Development of a State Program

- Filing Requirements
 - Electronic Filing
 - Number of Paper Copies per Filing
 - Who receives a copy of a Filing
- Intervention by Federal Agencies
- Consultation and Coordination with Federal Agencies
 - Endangered Species Act
 - National Historic Preservation Act
 - Fish and Wildlife Coordination Act
 - National Environmental Policy Act
 - Forest Service Special-Use Authorization

Issues to be Discussed during the Development of a State Program

- State Licensing Process
 - Time frame
 - Processing Schedule
 - Flexibility in Processing Schedules
 - Delegation of Authority
 - Critical Energy Infrastructure Information
- Third Party Contractors / Consultants

Potential State Program



Questions in Docket R-03-5, Order No. 1

- We intend to conduct interactive and structural workshops to make a record to develop the regulations. Can you and/or your organization attend a workshop, and are you willing to provide written comments?
- What are the institutional, regulatory, financial, and legal factors at the federal and state levels that either encourage or impair the development of a state licensing program?

Questions in Docket R-03-5, Order No. 1

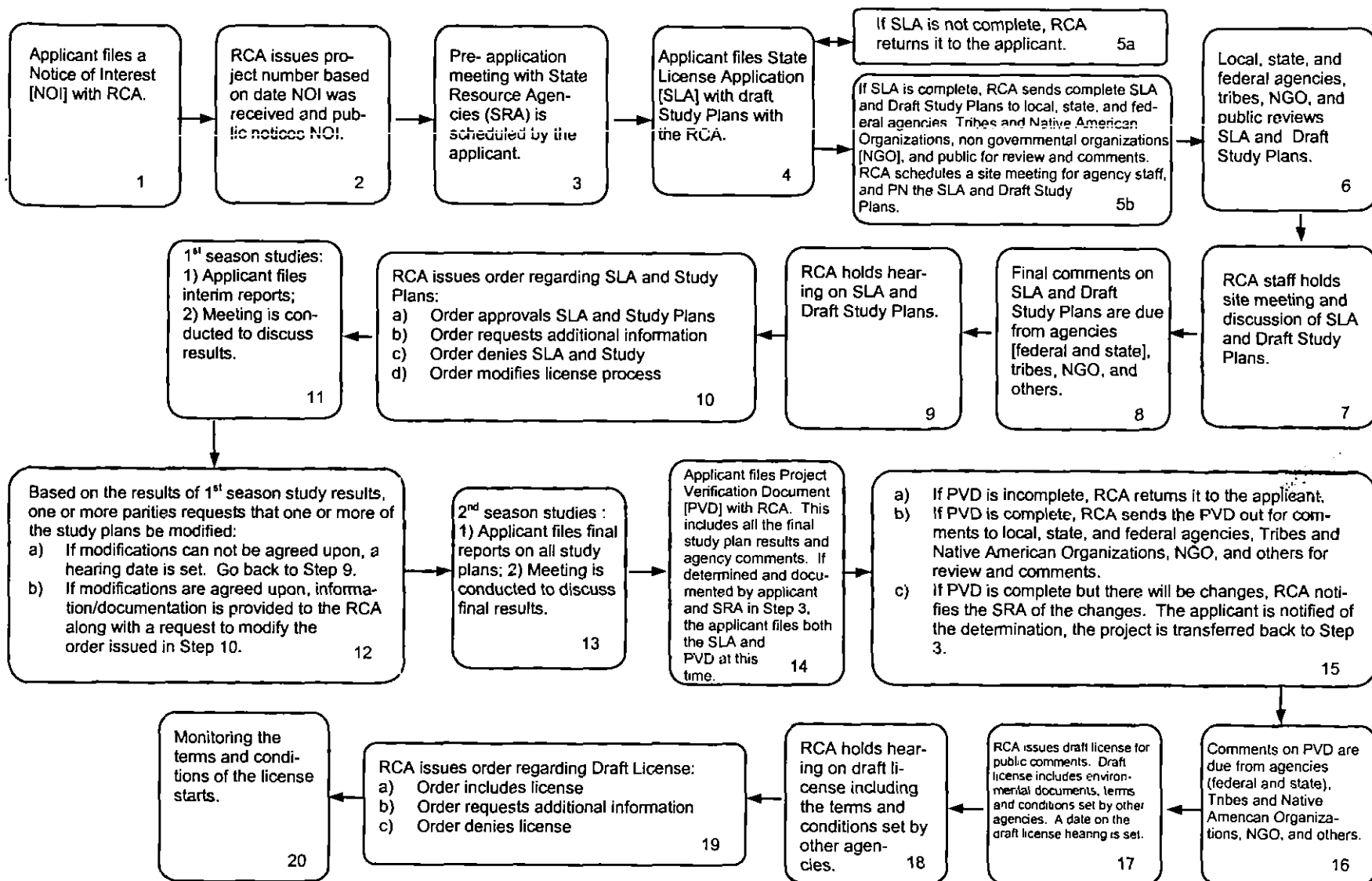
- We offered the following information to assist in providing comments on the previous question:
 - Institutional – Intergovernmental, cultural, procedural, or relationship issues that either enhance or impair the ability of the state to develop a regulatory program for qualifying water-power development facilities.
 - Regulatory – Federal, state, or local rules, ordinances, regulations, statutes, and codes that could affect the transfer of the program to the state.
 - Financial – Financial practices, policies, or conditions that affect the transfer of the program to the state.
 - Legal – Federal, state, or local statutes, codes, interpretations of laws, policy decisions, and court decisions that affect the transfer of the program to the state.

Questions in Docket R-03-5, Order No. 1

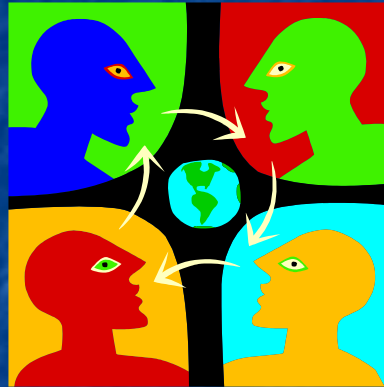
- In the protection of the public interest and the environment, the RCA is required to give equal consideration to energy conservation; the protection of, mitigation of damage to, and enhancement of, fish and wildlife, including related spawning grounds and habitat; the protection of recreational opportunities; the preservation of other aspects of environmental quality; the interests of resident Alaska Natives; other beneficial public uses, including irrigation, flood control, water supply, navigation; and the interest of Alaska residents and landowners. Should we give equal consideration to additional issues? Are there any of the above issues that in your opinion be given a higher priority than others? How can we fairly consider these factors in a licensing process at the state level efficiently?

Questions in Docket R-03-5, Order No. 1

- Should any proposed state licensing program be patterned after the existing federal licensing processes?
- Currently FERC is classifying water-power development facilities as either exempt, minor, and major projects. Should the state program follow, modify, or develop its own classification of facilities?



Scheduling Workshops



Workshops

- Should the RCA schedule more workshops?
- Should the RCA continue to use a court reporter?
- Are you interested in using the State Videoconferencing services for some workshops?
- Would 10 to 14 days before a workshop is scheduled be sufficient time to review information that will be discussed at the workshop?

Committee Formation

■ Request for Participation

- We also seek to identify persons or organizations willing to participate in a committee to be formed after the three workshops and to meet several times during the next several months to provide verbal and/or written comments to use on the development of the proposed regulations.

■ Formation of the Committee

- Are you willing to become a member?
- Recommendations on the makeup of the committee?
- Should committee meetings be tied to workshops?
- Are you interested in using the State's videoconferencing services?

Questions?

Who to Contact?

- Would you like to be placed on the mailing list?
- If you have a question, who to contact?
- Keven Kleweno, P.E.
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