BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of Request for Amendment 1 of the Site Certificate for the Madras Solar Energy Facility	))))	PROPOSED ORDER

January 30, 2025

RED underline and strikethrough represent recommended changes from Draft Proposed Order (DPO) to Proposed Order

BLACK underline and strikethrough represent Department's initial recommended condition changes as presented in the DPO

Table of Contents

I. INTRODUCTION 1
I.A. SITE CERTIFICATE PROCEDURAL HISTORY 1
I.B. NAME AND ADDRESS OF CERTIFICATE HOLDER 1
I.C. APPROVED FACILITY 2
I.D. APPROVED SITE DESCRIPTION 4
II. AMENDMENT PROCESS 6
II.A. REQUESTED AMENDMENT 7
II.B. SCOPE OF COUNCIL REVIEW 7
II.C. COUNCIL REVIEW PROCESS 8
II.C.1. Request for Amendment 8
II.C.2. Draft Proposed Order 9
II.C.3. Proposed Order 15
II.C.4. Council Evaluation of Requests for Contested Case Proceeding 15
II.C.5. Final Order 16
III. EVALUATION OF COUNCIL STANDARDS 16
III.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000 16
III.A.1. Findings of Fact 17
III.A.2. Conclusions of Law 19
III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010 19
III.B.1. Findings of Fact 20
III.B.2. Conclusions of Law 23
III.C. STRUCTURAL STANDARD: OAR 345-022-0020 23
III.C.1. Findings of Fact 24
III.C.2. Conclusions of Law 25
III.D. SOIL PROTECTION: OAR 345-022-0022 25
III.D.1. Findings of Fact 25
III.D.2. Conclusions of Law 26
III.E. LAND USE: OAR 345-022-0030 26
III.E.1. Findings of Fact 29
III.E.2. Conclusions of Law 33
III.F. PROTECTED AREAS: OAR 345-022-0040 33

III.F.1. Findings of Fact 34
III.F.2. Conclusions of Law 41
III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 41
III.G.1. Findings of Fact 41
III.G.2. Conclusions of Law 48
III.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060 48
III.H.1. Findings of Fact 48
III.H.2. Conclusions of Law 52
III.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070 52
III.I.1. Findings of Fact 52
III.I.2. Conclusions of Law 53
III.J. SCENIC RESOURCES: OAR 345-022-0080 54
III.J.1. Findings of Fact 54
III.J.2. Conclusions of Law 60
III.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090 60
III.K.1. Findings of Fact 60
III.K.2. Conclusions of Law 63
III.L. RECREATION: OAR 345-022-0100 63
III.L.1. Findings of Fact 64
III.L.2. Conclusions of Law 68
III.M. PUBLIC SERVICES: OAR 345-022-0110 68
III.M.1. Findings of Fact 68
III.M.2. Conclusions of Law 74
III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 74
III.N.1. Findings of Fact 76
III.N.2. Conclusions of Law 90
III.O. WASTE MINIMIZATION: OAR 345-022-0120 90
III.O.1. Findings of Fact 90
III.O.2. Conclusions of Law 92
III.P. SITING STANDARDS FOR TRANSMISSION LINES – OAR 345-024-0090 92
III.P.1. Findings of Fact 92
III.P.2. Conclusions of Law 93
IV. EVALUATION OF OTHER APPLICABLE REGULATORY REQUIREMENTS 93

IV.A. Noise Control Regulations: OAR 340-035-0035 93
IV.A.1. Findings of Fact 98
IV.A.2. Conclusions of Law 101
IV.B. Removal-Fill 101
IV.B.1. Findings of Fact 101
IV.B.2. Conclusions of Law 102
IV.C. Water Rights 102
IV.C.1. Findings of Fact 102
IV.C.2. Conclusions of Law 102
V. PROPOSED CONCLUSIONS AND ORDER 103
ATTACHMENTS 103

Tables

Table A-1: Summary of DPO Comments and Department's Recommended Proposed Order Revisions 11
Table 1: Facility Component Summary 2
Table 2: Summary of Reviewing Agency Comments 8
Table 3: Jefferson County Applicable Substantive Criteria 30
Table 4: Protected Areas within the 20-mile Analysis Area 34
Table 5: Updated Retirement Cost Estimate 43
Table 6: Council-Protected Scenic Resources Identified in Applicable Land Use and Management Plans and Summary of Visual Impact Assessment 56
Table 7: Summary of Recreational Opportunity Impact Assessment 65
Table 8: Estimated Maximum Water Use from Construction and Operation 70
Table 9: Summary of Ambient Noise Measurement Results at NSRs 100

Figures

Figure 1: Approved Site Boundary and Vicinity 5
Figure 2: Protected Areas Within the RFA1 Analysis Area 37
Figure 3: Priority Wildlife Corridor Areas within and in proximity to the approximate Facility site 50
Figure 4: Overall Wildfire Risk (2018 CWPP Planning Tool) 79
Figure 5: Jefferson County 2020 CWPP 80
Figure 6: Preliminary Facility Design with Setbacks 83
Figure 7: RFA1 Review of Noise Sensitive Receptors Within 1 Mile of Site Boundary 99

Attachments

Attachment A: Draft First Amended Site Certificate
Attachment B-1: ~~Placeholder for~~ DPO Comments ~~and Responses EFSC Meeting - Adopted by Council to include EFSC Deliberation~~
Attachment B-2: Certificate Holder's Responses to Comments
Attachment C: Reviewing Agency Consultation and Documents Referenced in Order
Attachment D: Draft Habitat Mitigation Plan
Attachment E: Draft Noxious Weed Control Plan
Attachment F-1: Draft Construction Wildfire Mitigation Plan
Attachment F-2: Draft Operational Wildfire Mitigation Plan
Attachment G: Updated Decommissioning Cost Estimate and Assumptions

ABBREVIATIONS AND ACRONYMS

BIA	Bureau of Indian Affairs
BMP	Best Management Practices
CSZ	Cascadia Subduction Zone
CWPP	Community Wildfire Protection Plan
CTWSRO	Confederated Tribes of the Warms Springs of Oregon
DSL	Department of State Lands
DC	Direct Current
DPO	Draft Proposed Order
Parent Company	Ecoplexus Inc.
Council	Energy Facility Siting Council
EFSC	Energy Facility Siting Council
EFU	Exclusive Farm Use
Final Order on ASC	Final Order on Application for Site Certificate
HMP	Habitat Mitigation Plan
HMBP	Hazardous Materials Business Plan
JCCP	Jefferson County Comprehensive Plan
JCFD1	Jefferson County Fire District #1
JCTS	Jefferson County Transfer Station
JCZO	Jefferson County Zoning Ordinance
kV	kilovolt
LLC	Limited Liability Company
certificate holder	Madras PV1, LLC
Facility	Madras Solar Energy Facility
MW	Megawatt
NRHP	National Register of Historic Places
NRCS	Natural Resources Conservation Service
OAR	Oregon Administrative Rule
ORBIC	Oregon Biodiversity Information Center
ODAg	Oregon Department of Agriculture
Department	Oregon Department of Energy
ODOE	Oregon Department of Energy
ODFW	Oregon Department of Fish and Wildlife
LCDC	Oregon Land Conservation and Development Commission
ORS	Oregon Revised Statutes
OWRD	Oregon Water Resources Department
PRB	Pelton Round Butte
POI	point of inter-connection
PCS	power conversion station
pRFA	Preliminary Request for Amendment

ABBREVIATIONS AND ACRONYMS

PWCA	priority wildlife corridor area
RAI	Request for Additional Information
RFA1	Request for Amendment 1
SAG	Special Advisory Group
SPCC	Spill Prevention Control and Countermeasure Plan
T&E	Threatened and Endangered
U.S	United States
WMP	Wildfire Mitigation Plan
WUI	Wildland Urban Interface

I. INTRODUCTION

On June 25, 2024, Madras PV1, LLC (certificate holder), a wholly owned subsidiary of Ecoplexus Inc., filed Request for Amendment 1 of the Site Certificate for the Madras Solar Energy Facility (RFA1).

As described below, the Madras Solar Energy Facility (facility), is an approved but not yet-constructed 63 megawatts (MW) solar photovoltaic energy generation facility to be located in Jefferson County, within an approximately 284 acre site boundary.

As described in Section II of this Order, the certificate holder seeks Energy Facility Siting Council (EFSC or Council) approval for its first extension of the construction commencement deadline, from June 25, 2024 to June 25, 2027, which would then also extend the completion deadline 18 months from the date of commencement.[1]

In accordance with Oregon Administrative Rule (OAR) 345-027-~~0365~~0371, the Oregon Department of Energy (Department), as staff to the Council, issues this ~~Draft~~ Proposed Order recommending approval of RFA1, subject to the existing and recommended new and amended conditions set forth in this ~~Draft~~ Proposed Order. This Order, and the analysis and recommendations contained therein do not constitute a final determination by the Council.

Based upon review of RFA1, the DPO and the comments received by specific state agencies, local governments, the public, and Council, the Department recommends Council approve the request and issue a Final Order on RFA1 granting issuance of the First Amended Site Certificate subject to the existing and recommended new and amended conditions set forth in this proposed order.

I.A. SITE CERTIFICATE PROCEDURAL HISTORY

On June 25, 2021, the Council approved its Final Order on Application for the Site Certificate (Final Order on ASC) for the Madras Solar Energy Facility and issued the Site Certificate for the facility.

I.B. NAME AND ADDRESS OF CERTIFICATE HOLDER

Certificate Holder
Madras PV1, LLC
600 Park Offices Drive, Ste. 285

[1] OAR 345-027-0385(4) limits the number of construction deadline extensions that may be approved by Council to two. If the construction deadline extension is approved, Council may only approve one additional construction deadline extension in the future.

Durham, NC 27709

Parent Company of the Certificate Holder
Ecoplexus Inc.
600 Park Offices Dr, Ste. 285
Durham, NC 27709

I.C. APPROVED FACILITY

The facility is an approved but not yet constructed 63 megawatt (MW) solar photovoltaic energy generation facility to be located within an approximately 284 acre site boundary (see Figure 1 below). Specifications and details of the approved facility, including related or supporting facilities, are presented in Table 1 below.

Table 1: Facility Component Summary

Component and Design Standard	**No.**	**Unit**
Site Boundary		
Site Boundary	284	acres
Micrositing Area	284	acres
Maximum Area within Fenceline	270.18	acres
Solar Components		
PV Solar Modules		
Approx. total number	137,673	modules
Max Height at full-tilt	8-10	feet
Posts		
Approx. total number (assumes ballasted design for foundations)	114,000	posts
Cabling		
Combiner Boxes	274	each
Inverter Step Up Transformer Units (Power Conversion Station – PCS)		
Approx. total number	19	each
Noise level	92	dBA
Transformer oil-containing capacity	550	Gallons/each
Related or Supporting Facility Components		
34.5 kilovolt (kV) Collection System[1]		
Collector line length with Cable Tray	4	miles
Collector Substations		
Substations w SCADA; Generator step-up transformers, each	1	each
Site size (approx.)	1	acre
Transformer oil-containing capacity	8,000	gallons/each
Transformer noise level	86	dBA
Max height of structures	34	feet

Table 1: Facility Component Summary

Component and Design Standard	No.	Unit
Switching Station (POI)		
Stations; transformers, each	1	each
Site size (with foundation and graveled areas)	0.06	acres
230 kV Transmission Line		
Length (total; northern line; southern line)	200	feet
Structures: Type (H frame); quantity	4	each
Height of structures	80	feet
Battery Energy Storage System (Lithium-ion/Zinc)		
Zinc		
Approx. total batteries/containers on foundations with fans/heating systems; SCADA	120	each
Site size	0.088	acres
Approx. container dimensions	9.5 x 8 x 40	H x W x L; feet
Noise level (broadband)	87	dBA
Lithium-ion		
Approx. total batteries/containers on foundations with HVAC and fire suppression systems; SCADA	120	each
Site size	0.088	acres
Approx. container dimensions	9.5 x 8 x 40	H x W x L; feet
Noise level (broadband)	87	dBA
O&M Building		
Quantity	1	each
Site size	320	Sq. ft.
Height	8.5	feet
Appurtenances	Portable toilets, fencing	
Facility Roads		
Length (main access roads/service roads)	5,000	feet
Width (main access/service)	24/16-20	feet
Perimeter Fence		
Length	23,306	miles
Height	6-8	feet
Access/gates	3	each
Temporary Concrete Batch Plant		
Quantity	1	each
Temporary Construction Areas		
Quantity	1	each
Site size	6.77	acres
Description	Graveled	

Table 1: Facility Component Summary

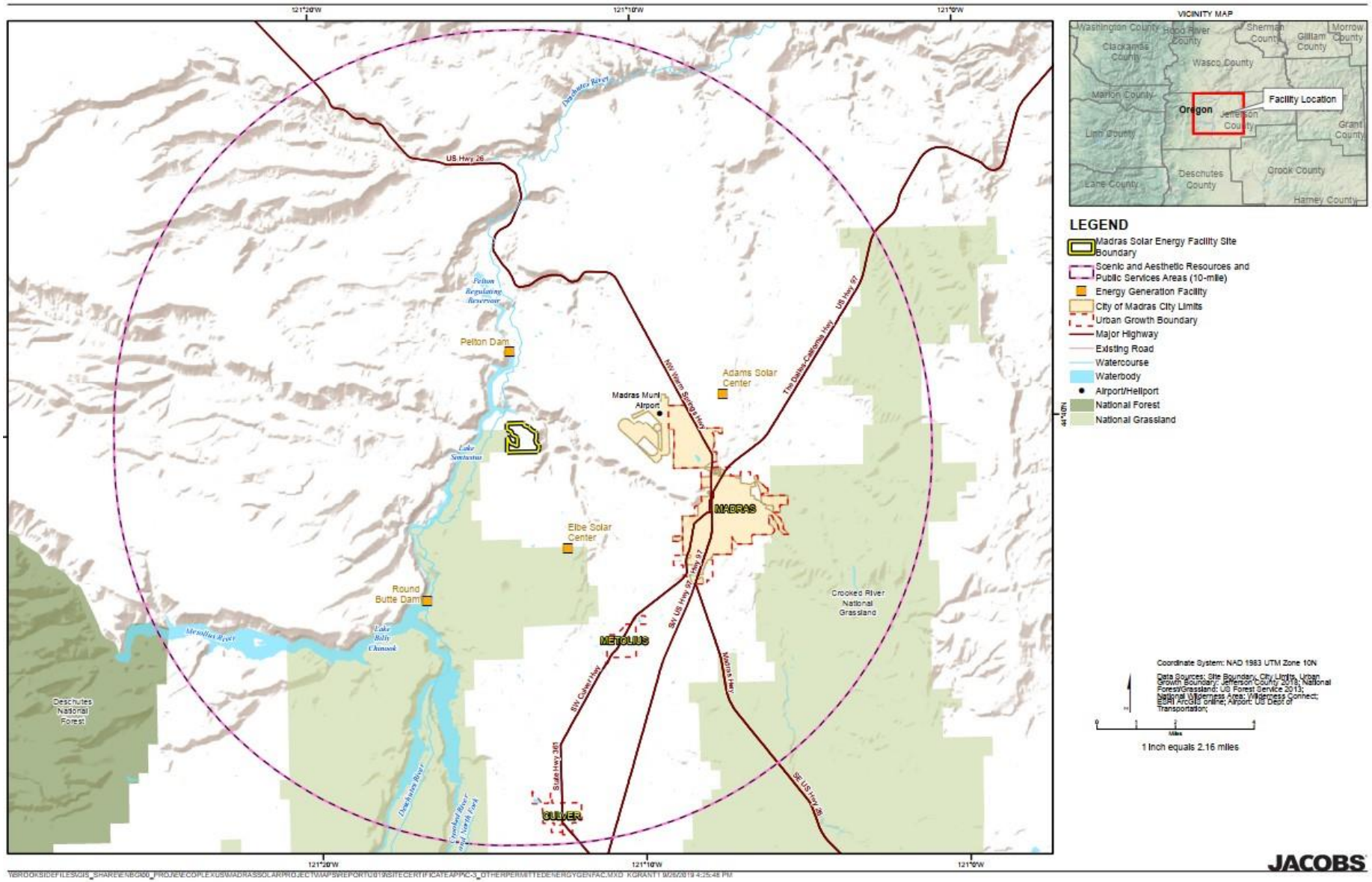
Component and Design Standard	No.	Unit
Acronyms: dBA = A-weighted decibels; HVAC = heating, ventilation and air conditioning; kV = kilovolt; OH = overhead; O&M = operations and maintenance; SCADA = supervisory, control and data acquisition Notes: 1. The electrical collection system, or portions thereof, may be aboveground. If aboveground, there would be up to 50 wood monopoles. Disturbance would be greater from underground system, which is represented in the table above.		

I.D. APPROVED SITE DESCRIPTION

As presented in Figure 1: *Approved Site Boundary and Vicinity* below, the facility is located within an approximately 284 acre site boundary in Jefferson County, Oregon. The facility site is located on private land approximately 5.5 miles west of the City of Madras, east of Lake Simtustus, south and west of Willow Creek, and approximately 0.5 miles from the eastern boundary of the Confederated Tribes of the Warm Springs Reservation of Oregon.

The approved site boundary is considered a "micrositing area" authorizing construction-related disturbance on up to 284 acres, with a maximum of 270 acres to be used or occupied by solar photovoltaic energy generation components within the perimeter fenceline.~~with temporary and permanent disturbance within the site boundary of approximately 7 and 277 acres, respectively~~.

Figure 1: Approved Site Boundary and Vicinity



II. AMENDMENT PROCESS

With some exceptions, an amendment to a site certificate is required for any change in the design, construction, or operation of a facility when different from that described in the site certificate, if the proposed change (1) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard; (2) Could impair the certificate holder's ability to comply with a site certificate condition; or (3) Could require a new condition or a change to a condition in the site certificate. OAR 345-027-0350(3). In addition, a site certificate is required to extend the construction beginning or completion deadlines specified in the site certificate. OAR 345-027-0350(4).

The Type A amendment review process (consisting of OARs 345-027-0359, -0360, -0363, -0365, -0367, -0371 and -0375) is the default amendment review process and shall apply to the Council's review of a request for amendment proposing a change described in OAR 345-027-0350(2), (3), and (4).[2]

Council rules describe the differences in review processes for the Type A and Type B review paths at OAR 345-027-0351.[3] The Type A review is the standard or "default" amendment review process for changes that require an amendment. A key procedural difference between the Type A and Type B review process is that the Type A review requires a public hearing on the Draft Proposed Order (DPO) and provides an opportunity to request a contested case proceeding on the Department's proposed order. Another difference between the Type A and Type B review process relates to the time afforded to the Department in its determination of completeness of the amendment and issuance of the DPO. Council rules authorize the Department to adjust the timelines for these specific procedural requirements, if necessary.

A certificate holder may submit an amendment determination request to the Department for a written determination of whether a request for amendment justifies review under the Type B review process. The certificate holder has the burden of justifying the appropriateness of the Type B review process as described in OAR 345-027-0351(3). The Department may consider, but is not limited to, the factors identified in OAR 345-027-0357(8) when determining whether to process an amendment request under Type B review.

On June 25, 2024, the certificate holder submitted preliminary RFA1 inclusive of a Type B Review amendment determination request (Type B Review ADR), requesting the Department's

[2] OAR 345-027-0351(2).

[3] OAR 345-027-0351(1) designates the amendment process that applies to Council's review of a request for amendment to a site certificate to transfer a site certificate under OAR 345-027-0400, and OAR 345-027-0351(4) designates the pathway for a type c amendment under OAR 345-027-0380 which applies to a request for amendment when the change proposed in the request for amendment relates to the facility, or portion/phase of the facility, not yet in operation, but approved for construction in the site certificate or amended site certificate.

review and determination of whether, based on evaluation of the OAR 345-027-0357(8) factors, the amendment request could be reviewed under the Type B review process. On July 19, 2024, the Department issued its determination on the Type B Review ADR, affirming that the Type A process be maintained based on the complexity of the proposed change including potential changes in facts and laws, such as the new evaluation required to address the Council's Wildfire Prevention and Risk Mitigation standard adopted after Council's last review of the facility. The Department's determination was made available to the public via a courtesy electronic notification, posting to the Department's project webpage and announcement at the July 19, 2024 Council meeting.

II.A. REQUESTED AMENDMENT

The certificate holder seeks approval to extend the construction commencement and completion deadlines. The extension is needed because development planning and permitting is not yet complete. The certificate holder has not yet secured an agreement to interconnect to the Pelton-Round Butte 230 kV transmission line which is co-owned by PGE and CTWS. PGE and/or CTWS would have to apply to FERC for the approval to interconnect to the line, which has not occurred.[4] On September 5, 2024, the certificate holder submitted a petition for a declaratory judgment to FERC on the matter and is awaiting response. If a favorable resolution is received, certificate holder would be able to enter into construction by the new requested deadline and would enter construction as soon as practicable.[5] The requested deadline extensions are discussed throughout this order and in Section III.A., *General Standard of Review*.

II.B. SCOPE OF COUNCIL REVIEW

Under OAR 345-027-0375, in making a decision to grant or deny issuance of the amended site certificate for construction deadline extensions, the Council must determine whether the preponderance of evidence on the record supports the following conclusion:[6]

- After considering any changes in facts or law since the date the current site certificate was executed, the facility complies with all laws and Council standards applicable to an original site certificate application.[7]

[4] OAR 345-027-0385(1) requires that a preliminary request for amendment include an "explanation of the need for an extension.."

[5] MSEFAMD1 RAI 1 Applicant Response 2024-09-09.

[6] In making findings under OAR 345-027-0375(2), the Council must apply the applicable laws and Council standards in effect on the following dates:
(a) For the applicable substantive criteria under the Council's land use standard, as described in OAR 345-022-0030, the date the request for amendment was submitted; and
(b) For all other applicable laws and Council standards, the date the Council issues its final order on the request for amendment.

[7] OAR 345-027-0375(b)(A)-(D), outlines circumstances in which Council may waive findings of compliance under its standards or laws, which has not been requested by the certificate order or recommended in this order.

For other changes included in an RFA, such as changes to site certificate conditions, the Council must determine whether the preponderance of evidence on the record supports the following conclusion:

- The facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change.[8]

For all requests for amendment, Council must determine whether the preponderance of evidence on the record supports whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.[9]

The recommended findings of fact and conclusions of law provided in this order in Section III., *Evaluation of Council Standards*, support the recommendations under OAR 345-027-0375.

II.C. COUNCIL REVIEW PROCESS

II.C.1. Request for Amendment

On June 25, 2024, the certificate holder submitted preliminary Request for Site Certificate Amendment 1 (pRFA1). On July 3, 2024, the Department issued Public Notice that pRFA1 had been received as required by OAR 345-027-0360(2). The notice was issued to all persons on the general mailing list, special mailing list, reviewing agencies as defined in OAR 345-001-0010(51), and property owners within 500 feet of the property which is the subject of the amendment request.[10] Reviewing agency comments received on pRFA1 are summarized in Table 2 below.

Table 2: Summary of Reviewing Agency Comments

Agency	Comments
ODFW (Greg Jackle, Jessica Clark, Jeremy Thompson)	OAR 345-022-0060 Fish and Wildlife Habitat Evaluation: The facility site's northern boundary runs along an ODFW designated priority wildlife corridor area (PWCA), but generally is sited to avoid the PWCA and therefore would not impact the site's habitat categorization or associated mitigation obligation/Habitat Mitigation Plan (HMP). There have been no updates to ODFW deer and elk winter range maps that are relevant or that would impact the prior characterization of the site.

[8] OAR 345-027-0375(c).

[9] OAR 345-027-0375(e).

[10] MSEFAMD1Doc2 pRFA1 Public Notice 2024-06-02.

Table 2: Summary of Reviewing Agency Comments

Agency	Comments
	ODFW concurs that the prior habitat categorization of Category 4 with current Incidental Take Permit (ITP) remains valid. Recent fire does not impact habitat categorization. ODFW accepts the proposal to incorporate 6.7 acres of what was previously identified as temporary habitat impacts into the HMP, and to apply general revegetation requirements to the 6.7 acres. This results in a lessor monitoring obligation for the certificate holder while still requiring revegetation consistent with the surrounding environment, and increased area for the long-term habitat mitigation area. No other comments or concerns. OAR 345-022-0070: Threatened and Endangered Species Evaluation: There is no suitable habitat or potential for state-listed T&E species to occur within the site. No concerns.
Notes: 1. Copies of written comments are included in Attachment C to this order.	

On August 22, 2024, the Department notified the certificate holder that pRFA1 was incomplete and requested additional information. On September 9 and 23, 2024, the certificate holder responded to the Department's Request for Additional Information 1 (RAI1). On September 26, 2024, the Department issued a second request for additional information (RAI2). The certificate holder provided RAI2 responses on October 3 and 9, 2024. On October 17, 2024 the Department notified the certificate holder that Request for Amendment was Complete. On October 18, 2024, the Department issued Public Notice of the Complete Request for Amendment and Draft Proposed Order as required by OAR 345-027-0365.

II.C.2. Draft Proposed Order

On October 18, 2024, the Department issued a~~A~~ Public Notice of a comment period on RFA1 and the Draft Proposed Order on RFA1. Issuance of the DPO and Public Notice ~~was issued concurrently with this Order. The Public Notice of the Draft Proposed Order initiates~~ initiated a 27-day public comment period ~~on the Request for Amendment and the Draft Proposed Order. To raise an issue on the record of the DPO, a person must raise the issue in a written comment submitted between the date of the Public Notice of the DPO and the written comment deadline established in the Public Notice or in person at the public hearing on the DPO. The Council will not accept or consider public comments on RFA1 or on the DPO received after the written comment deadline, which is November 14, 2024~~ to conclude at the close of the public hearing, on November 14, 2024 ~~unless extended by Council~~.

~~To properly raise an issue in a request for a contested case proceeding for an amendment (discussed further in the following section), the issue must be within the jurisdiction of the Council, and, as noted above, the person must have raised the issue in person or in writing on the record of the public hearing of the DPO. If a person has not raised an issue before the close of the record with sufficient specificity to afford the Council, Department and certificate holder an adequate opportunity to respond to the issue, the Council may not grant a contested case proceeding for that issue.[11] To have raised an issue with sufficient specificity, the person must have presented facts that support that person's position on the issue.[12, 13]~~

The Department received six written and one oral comment on the record of the draft proposed order public hearing, including comments from members of the public, reviewing agencies, and the certificate holder. All comments were transmitted to Council for its review and consideration and are included as Attachment B to this order. [14] As part of the public hearing, Council considered and granted a request by the Confederated Tribes of the Warm Springs Reservation of Oregon (CWTS) to extend the comment deadline by three weeks. The comment deadline was extended until December 5, 2024 at 5:00 Pacific Time (PT).

On January 17, 2025, Council reviewed the DPO, and issues raised in comments received on the record of the DPO public hearing. A summary of DPO comments and the Department's recommendations as incorporated in the proposed order are presented in Table A-1 below.

~~[11] 469.370(3).~~

~~[12] OAR 345-027-0371(5).~~

~~[13] OAR 345-015-0016(3). Council does not consider incorporation by reference statements or comments made by other persons, (whether they are comments on the DPO, raised by other commenters for this facility or past proceedings, comments on another agency proceeding, or other external references) to meet the sufficient specificity requirement under ORS 469.370(3) and OAR 345-015-0016(3). Blanket incorporations by reference do not afford the Department, Council or certificate holder an adequate opportunity to respond to each issue as required under ORS 469.370(3) because they typically do not specify which portion(s) of the other person(s) comments are to be incorporated or how those comments relate to any alleged shortcoming in the subject DPO.~~

[14] All comments on the record of the DPO were provided to Council prior to the January 17, 2025 EFSC meeting.

1

Table A-1: Department's Evaluation of Issues Raised in DPO Comments/Proposed Order Revisions

Commenter/Organization	Issues Raised/Comment Summary	Certificate Holder Responses Summary	Related EFSC Standard(s) and/or Requirements	Department's Recommended Changes to findings or conditions from DPO to Proposed Order
Public				
Alan Clark (Property owner)	In favor of project. Great location, and states that the project will "preserve the ground for years to come".	n/a	Land Use	No changes incorporated into Proposed Order in response to comment.
Daniel Craig	"we need bad fo rhe [*sic*] environment"	n/a	n/a	No changes incorporated into Proposed Order in response to comment.
Certificate Holder				
Paul Szewczykowski, Ecoplexus	Transmittal of Deschutes Valley Water District letter, confirming their ability to serve the domestic drinking water needs for the amounts Ecoplexus requested.	n/a	Public Services	No changes incorporated into Proposed Order in response to comment.
	Transmittal of Jefferson County Fire and EMS letter, confirming ongoing emergency services including fire and life services.	n/a	Public Services	No changes incorporated into Proposed Order in response to comment.
Reviewing Agency				
Oregon State Historic Preservation Office	Case number assigned for review of project.	n/a	Historic, Cultural, and Archeological Resources	No changes incorporated into Proposed Order in response to comment.
Peter Ryan, Oregon Department of State Lands	Wetland Delineation expired on March 5, 2024. However, there are no jurisdictional wetlands or waterways within the project study area.	n/a	Removal-Fill	No changes incorporated into Proposed Order in response to comment.
Jordan Brown, Oregon Department of Agriculture	No comment for RFA1; no listed plants known to occur in Jefferson County.	n/a	Threatened and Endangered Species	No changes incorporated into Proposed Order in response to comment.
Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS)	Request to extend the public comment period.	Certificate Holder had no objections	n/a	No changes incorporated into Proposed Order in response to comment.
	Site Certificate authorizes a related and supporting facility to enter the Federal Energy Regulatory Commission (FERC) licensed facility project boundary for a non-Pelton Project purpose.	FERC's precedent on this point strongly suggests that FERC will find that the Tribes may not unilaterally withhold consent to interconnect in this case. But that is a matter to be decided at FERC, not the Council, and indeed the very reason for the requested extension of time here is to allow for such resolution to occur at FERC before construction must commence under the Site Certificate.	n/a	No changes incorporated into Proposed Order in response to comment.
	The Pelton generator line is not subject to regulation under FERC's open access policies, due to its joint ownership by PGE and the CTWS -which is not regulated as a public utility.		n/a	No changes incorporated into Proposed Order in response to comment.
	The CTWS has not provided its consent to access any capacity on the Pelton generator line and interconnection	Madras argues the Tribe is seeking "to reopen the Council's finding" regarding locational dependence.	Land Use	Changes are incorporated into the Proposed Order in response to these comments.

Table A-1: Department's Evaluation of Issues Raised in DPO Comments/Proposed Order Revisions

Commenter/Organization	Issues Raised/Comment Summary	Certificate Holder Responses Summary	Related EFSC Standard(s) and/or Requirements	Department's Recommended Changes to findings or conditions from DPO to Proposed Order
	to the Northwest power grid. Therefore, Council's approval of the goal exception, and determination that the facility is locationally dependent cannot be made to meet its standards.	They contend OAR 345-027-0375(2)(b) is met because "Madras Solar is not in violation of any laws by proposing to interconnect to the generator tie line . . ." The further argue the requested amendment is warranted because they only need to extend the deadlines due to unexpected delays in obtaining PGE and the Tribe's consent to amend their license to allow Madras to interconnect to the Pelton line.		When Council approved the original application, CTWS did not inform Council that it had not agreed to allow Madras to interconnect to the Pelton line. CTWS has now made Council aware of that fact. Thus, pursuant to OAR 345-027-0375(2)(b), Council must take that fact into consideration when determining whether to grant the request to amend the site certificate. The fact that CTWS has not agreed to allow Madras to interconnect to the Pelton line does not mean Council cannot maintain the exception to Goal 3. The Department recommends Council affirm the exception to Goal 3 based on a locational dependence reason, while imposing a condition that, prior to construction, Madras provide evidence that it will be able to interconnect to the Pelton line. These changes have been incorporated into Section III.E Land Use.
	The CTWS does not concur that FERC has the discretionary authority as advocated by Madras to amend the Pelton Project hydropower license to the extent necessary to allow Madras' interconnection. To the extent discretion does exist, the CTWS does not believe that FERC will order use of the Tribe's facilities over its objection.	Issues related to the interconnection agreement are "properly before FERC and beyond the scope of the Council's Site Certificate." There is no preemption because the Site Certificate does not require anything of CTWS or PGE (e.g., Council is not requiring the Tribes or PGE to obtain any permits from the Council), rather the Site Certificate creates obligations for Madras. Further, the Site Certificate already includes a condition requiring Madras to comply with any FERC directives on interconnection to the Pelton line. FERC regularly approves non-hydropower projects within licensed hydropower boundaries and expressly requires compliance with "all necessary local, state,	n/a	No changes incorporated into Proposed Order in response to comment. Council does not have the authority to grant an interconnection agreement.
	The Tribe questions whether the Council is preempted under the Federal Power Act.		n/a	No changes incorporated into Proposed Order in response to comment. Federal preemption doctrine means states and local governments cannot regulate a matter that the federal government exclusively regulates. The Site Certificate does not regulate the Pelton line nor does it authorize interconnection to the line.

Table A-1: Department's Evaluation of Issues Raised in DPO Comments/Proposed Order Revisions

Commenter/Organization	Issues Raised/Comment Summary	Certificate Holder Responses Summary	Related EFSC Standard(s) and/or Requirements	Department's Recommended Changes to findings or conditions from DPO to Proposed Order
		and federal permits" for such activities and cites to several FERC orders approving such activities. Regarding the Tribes contention that construction of a fenced boundary under the Site Certificate will exclude the Tribes from accessing the Pelton line, Madras notes it's not clear which area the Tribes are referencing. They point out that under current plans there will be a fence surrounding the point of interconnection substation, that this is a standard safety feature for substations and that PGE, not Madras, will own and control the substation and access to it. Madras also offers to provide updated site plans to clarify that site fencing will not eliminate PGE and the Tribes access to the point of interconnection substation or any areas with their hydropower project's boundaries.		The *Sayles* case cited by CTWS is not applicable. It involved a hydroelectric project in California to whom FERC had issued a license. The courts held that the State of California could not require the developers to also obtain a permit from the state for the same project. Again, the site certificate that EFSC has issued regulates the Madras ~~project~~facility alone; it does not purport to require anything of CTWS or PGE regarding the Pelton Project. Further, General Standard of Review Condition 3.d. requires the certificate holder to design, construct, operate and retire the facility "[i]n compliance with all applicable lawful rules and requirements of federal agencies." Thus, the Site Certificate is not preempted because it expressly requires compliance with applicable federal law.
	The Tribe urges [EFSC], at a minimum, to impose conditions of approval necessary to permit it to make the necessary findings to meet the Council's standards and to craft any modifications to the Site Certificate necessary to conflict with FERC authority.		FERC = n/a General Standard of Review/Mandatory Condition OAR 345-025-0006(5) for access rights	Changes are incorporated into the Proposed Order in response to these comments. Regarding CTWS' contention that the site certificate would eliminate their access to the Pelton line through construction of a fenced boundary, certificate holder pointed out that if the Tribes are concerned about the fence around the point of interconnection substation, PGE (and presumably also the CTWS), not the certificate holder, will own and control access to the substation. Certificate holder did not explain how their plans for a perimeter fence around the entire facility would impact CTWS' access to the Pelton line but they did state that they can provide updated site plans to further clarify that site fencing will not eliminate PGE and the CTWS' access to the point of interconnection substation or any area within the Pelton project's license boundaries. Therefore,

Table A-1: Department's Evaluation of Issues Raised in DPO Comments/Proposed Order Revisions

Commenter/Organization	Issues Raised/Comment Summary	Certificate Holder Responses Summary	Related EFSC Standard(s) and/or Requirements	Department's Recommended Changes to findings or conditions from DPO to Proposed Order
				consistent, with this representation, the Department recommends Council impose a condition requiring that the certificate holder give CTWS and PGE (or any other future owners of the Pelton line) access to the line and prior to construction provide the Department an updated site plan showing the points of access. These changes have been incorporated into Section III.A General Standard of Review.

II.C.3. Proposed Order

~~Under OAR 345-027-0371(1), no later than 30 days after the Council has reviewed the DPO and considered all comments received on the record of the DPO public hearing under OAR 345-027-0367~~On January 29, 2025, the Department ~~must~~ issued ~~a~~ its Proposed Order recommending the Council ~~approval~~approve~~, modification or denial of~~ the request for amendment to the site certificate, with amended findings and conditions of approval based on ~~. T~~the Department~~s must~~ consideration of ~~any oral~~ timely comments on the Draft Proposed Order, and comments provided by Council at its November 14, 2024 and January 17, 2025 meetings. ~~made at the public hearing, written comments received before the close of the record of the public hearing, agency consultation, and any Council comments. The Department may issue the Proposed Order at a later date, but the Department must, no later than 30 days after the Council has reviewed the DPO and considered all comments received on the record of the public hearing, notify the certificate holder in writing of the reasons for the delay.~~

On the same day, a Public Notice of the Proposed Order and Opportunity to Request a Contested Case was sent to Council's general mailing list, any special mailing list for the facility, reviewing agencies, as well as property owners under OAR 345-027-0360(1)(f). In accordance with OAR 345-027-0371(4)~~Concurrent with issuing the Proposed Order~~, the Department ~~must send~~ also sent~~notice of the Proposed Order to Council's general mailing list, any special mailing list for the facility, reviewing agencies, as well as property owners under OAR 345-027-0360(1)(f). Under OAR 345-027-0371(4), on the same date as the notice of Proposed Order, the Department must send~~ a notice of the opportunity to request a contested case by mail or email to the certificate holder, and to all persons who commented in person or in writing on the record of the DPO public hearing.

~~If there are no requests for a contested case proceeding, the Council may adopt, modify or reject the proposed order based on the considerations described under the Scope of Council Review in OAR 345-027-0375. In a written order, the Council must either grant or deny issuance of an amended site certificate.~~[15]

II.C.4. Council Evaluation of Requests for Contested Case Proceeding

Only those persons, including the certificate holder, who commented in person or in writing on the record of the DPO public hearing (October 18 through ~~November 14~~December 5, 2024, ~~unless extended by Council)~~ may request a contested case proceeding on the Proposed Order for an amendment to the site certificate. Council's evaluation or whether to hold a contested case is described in OAR 345-027-0371 and is summarized below.

For consideration in a contested case, issues must:

- Be submitted within the comment timeframe;

[15] ~~OAR 345-027-0371(11).~~

- Be within the jurisdiction of the Council; and
- Include sufficient specificity with facts so that the Council, the Department, and the certificate holder can understand and respond to the issue raised

Threshold for a contested case for a Type A Amendment:

- Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Council Options on Requests for a Contested Case:

- Hold a contested case on properly raised issue(s) that could affect the Council's determination
- Remand Proposed Order to Department – direct the Department to address properly raised issue(s) in a revised Proposed Order, e.g., through new findings and/or conditions
- Deny – Request does not include properly raised issue(s)

II.C.5. Final Order

If there are no requests for a contested case proceeding, ~~The~~ the Council may adopt, modify or reject the Proposed Order based on the considerations described in OAR 345-027-0375. If the Proposed Order is adopted, or adopted with modifications, the Council shall issue a final order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a final order denying issuance of the amended site certificate.

III. EVALUATION OF COUNCIL STANDARDS

Where a standard requires an evaluation of whether or not the design, construction and operation of the facility, with proposed changes, is likely to result in a significant adverse impact to a resource, the Council defines "significant" as having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. No statistical analysis of the magnitude or likelihood of a particular impact is required to determine significance. [16]

III.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

[16] OAR 345-001-0010(29).

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

*****

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.[17]

III.A.1. Findings of Fact

OAR 345-022-0000 provides the Council's General Standard of Review and requires the Council to find that a preponderance of evidence on the record supports the conclusion that the facility, with proposed RFA1 changes, would continue to comply with the requirements of EFSC statutes, siting standards adopted by the Council, all other Oregon statutes and administrative rules applicable to the issuance of an amended site certificate for the facility. The record of the proceedings on the Final Order on the ASC and RFA1 demonstrate that the facility, with proposed RFA1 changes, provides a preponderance of evidence to make findings of fact and conclusions of law under each standard and applicable rule.

The requirements of OAR 345-022-0000 are discussed in the sections that follow. The Department consulted other state agencies during its review of pRFA1 to aid in the evaluation of whether the facility, with proposed RFA1 changes, would continue to satisfy the

[17] OAR 345-022-0000, effective March 8, 2017.

requirements of applicable statutes, rules and ordinances otherwise administered by other agencies.

OAR 345-022-0000(2) and (3) apply to RFAs where a certificate holder has shown that the proposed amendment cannot meet Council standards or has shown that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to protected resources; and, for those instances, establish criteria for the Council to evaluate in making a balancing determination. In RFA1, the certificate holder represents that the facility would continue to meet, with conditions, all applicable Council standards. Therefore, OAR 345-022-0000(2) and (3) would not apply to this review.

Construction Deadlines

The mandatory conditions of OAR 345-025-0006 were adopted and imposed by Council in the *Final Order on ASC*.[18] Pursuant to OAR 345-025-0006(4), Council must impose conditions in a site certificate that establish dates for the beginning and completion of construction. OAR 345-027-0385(5) authorizes Council to grant extensions of up to three years from the deadlines in effect prior to the Council's decision on the amendment, through no more than two amendment requests. In the Final Order on the ASC, Council established June 25, 2024 as the construction commencement deadline, where the completion deadline extended 18-months from the commencement date.

Certificate holder requests a deadline extension commensurate with the allowable 3-year extension established in rule, to be reflected in General Standard Condition 1 (GEN-GS-01), as amended below:

> **Recommended Amended General Standard Condition 1 [GEN] [OAR 345-025-0006(4)]:** The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.
>
> (a) Construction of the facility or facility component(s) shall commence ~~within three years after the date of Council action [~~by June 25, 202~~74]~~. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline by satisfying applicable preconstruction conditions and completing at least $250,000 work at the site.
>
> (b) Construction of the facility shall be completed within 18-months after the construction commencement date. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline.

[18] Department review of RFA1 identified Mandatory Condition OAR 345-025-0006(11), discussed and applied as General Standard Condition 6 (OPR-GS-01), was imposed by Council in the Final Order on ASC, but was inadvertently not included in Section 5.6 of the Site Certificate. Therefore, the Department has administratively included the condition, as imposed in the Final Order on ASC to the draft First Amended Site Certificate.

[Final Order on ASC, AMD1, Condition GEN-GS-01]

Council rules establish mandatory conditions that must be imposed in all site certificates. OAR 345-025-0006(5), or mandatory condition 5, requires that the certificate holder acquire construction rights on all parts of the site, before beginning construction. The authority provided in this mandatory condition allows Council to prohibit construction on any part of the site until access/rights have been obtained by the certificate holder. Consistent with this authority and certificate holder representations, the Council imposes the following condition to ensure that the facility layout and design do not preclude or limit access to the 230-kV Pelton Dam to Round Butte transmission line ROW, which traverses east-west through the middle of the facility site, by the line owner unless an access agreement has been obtained.[19]

Recommended General Standard Condition 12 [PRE]: Before beginning construction of the facility or facility component, as applicable, the certificate holder shall provide the Department a final site plan showing access locations to the Pelton Dam to Round Butte 230 kV transmission line and its right of way for the line owner, unless an access agreement has been executed between certificate holder and line owner. [PRE-GS-03; AMD1]

III.A.2. Conclusions of Law

As evaluated in this Order, the Department recommends the Council find that the facility, with the proposed RFA1 changes, would continue to comply with the requirements of Oregon Revised Statutes (ORS) 469.300 to 469.570 and 469.590 to 469.619, the Council's standards in OAR chapter 345, and all other Oregon statutes and administrative rules applicable to the issuance of an amended site certificate.

III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider

[19] MSEFAMD1 DPO Tribal Gov Comments CTWS 2024-12-05; MSEFAMD1 DPO Comment Responses Cert Holder 2025-01-06. On the record of the DPO, Confederated Tribes of the Warm Springs (CTWS) commented that they have not consented to an interconnection for the facility to the 230 kV Pelton Dam to Round Butte transmission line; and, expressed concern that the construction of the facility and perimeter fenceline would exclude CTWS from accessing the line in the future. In response, certificate holder indicated that final site plans that "clarify that PV site fencing will not eliminate access to the FERC-licensed 230 kV line" will be provided prior to construction.

the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.[20]

III.B.1. Findings of Fact

Subsections (1) and (2) of the Council's Organizational Expertise standard require that the certificate holder demonstrate its ability to design, construct, and operate the facility in compliance with Council standards and all site certificate conditions, as well as its ability to restore the site to a useful, non-hazardous condition. The Council may consider the certificate holder's experience and past performance in constructing, operating and retiring other facilities in determining compliance with the Council's Organizational Expertise standard. Subsections (3) and (4) address the applicant's reliance upon third party permits.

Compliance with Council Standards and Site Certificate Conditions

[20] OAR 345-022-0010, effective April 3, 2002.

Madras PV1, LLC is a project-specific limited liability company (LLC) and therefore previously relied upon the organizational expertise and experience of its parent company, Ecoplexus Inc., to demonstrate compliance with the Council's Organizational Expertise standard. Since Council approved the original Application for Site Certificate, there has been a change in organizational structure, where the certificate holder is now wholly held by a new entity, Fresh Air Power Development, LLC. Per the certificate holder, Ecoplexus Inc., is the 100 percent owner of Fresh Air Power Development, LLC and the latter holds Ecoplexus' operating solar project assets. The certificate holder continues to rely on Ecoplexus for the technical and financial capabilities necessary to comply with the standard.

The Organizational Expertise standard expressly allows Council to consider a certificate holder's access to technical expertise when assessing whether the certificate holder complies with the standard. Given the reliance on the parent company, the Department recommends Council supplement site certificate conditions to authorize the Department and Council to adjust the facility decommissioning estimate and the associated amount of financial assurance the certificate holder must provide, should non-compliance and operability issues lead to a circumstance where the certificate holder is unable to fulfil its obligation to decommission the facility based on a Council approved retirement plan and set of EFSC site certificate conditions.

The process of designing, constructing and operating a facility in compliance with an EFSC issued Site Certificate is costly. Resolving compliance issues is costly. Decommissioning the facility and restoring the site to a useful, nonhazardous condition was previously estimated at over $5 million.

To protect the State from risk that $5 million is no longer adequate to decommission the facility and restore the site due to failure to comply and or operate the facility in a manner that protects public health and safety, the Department recommends Council amend Organizational Expertise Condition 5 (GEN-OE-04), as presented below:

> **Recommended Amended Organizational Expertise Condition 5 [GEN]:** The certificate holder shall, as soon as reasonably possible:
>
> a. Report incidents or circumstances that may violate the terms or conditions of the site certificate, terms or conditions of any order of the Council, or the terms or conditions of any order issued under OAR 345-027-0230, to the Department. In the report to the Department, the certificate holder shall provide all pertinent facts including an estimate of how long the conditions or circumstances existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit;
> b. Initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence;
> c. Submit a written report within 30 days of discovery to the Department. The report must contain:
> i. A discussion of the cause of the reported conditions or circumstances;

ii. The date of discovery of the conditions or circumstances by the responsible party;
iii. A description of immediate actions taken to correct the reported conditions or circumstances;
iv. A description of actions taken or planned to minimize the possibility of recurrence; and
v. For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported conditions or circumstances.

d. Upon receipt of the written report in sub(c) of this condition, the Department may review the facility record for incidents or circumstances reported or reportable under sub(a) related to public health and safety, the environment, or other resources protected under Council standards. If these incidences are determined by the Department to impact the adequacy of the facility decommissioning cost, the Department or Council may adjust the contingencies identified in Final Order on RFA1 Table 5 and request that the certificate holder promptly provide an updated bond or letter of credit in the adjusted amount.
[OAR 345-029-0010, GEN-OE-04, Final Order on ASC, RFA1]

As presented in Section III.G. *Retirement and Financial Assurance*, the Department recommends Council amend Retirement and Financial Assurance Condition 4 to provide the Department and Council authority to adjust the contingencies applied to the retirement estimate, consistent with recommended amended Organizational Expertise Condition 5(d) above.

Ecoplexus's central development focus is on utility-scale solar PV facilities in the 20- to 100-MW range, along with large-scale government and commercial solar installations. Ecoplexus has constructed over 300 MWs of direct current (DC), renewable generation facilities in the United States (U.S.) alone and is currently developing over 3.5 gigawatts of utility-scale assets across the U.S., Mexico, and Asia.[21] There have been no regulatory citations issued to the certificate holder or Ecoplexus within the last 5 years.[22] Council previously determined that Ecoplexus has the expertise to construct, operate and retire the facility in compliance with Council standards and that it has a reasonable likelihood of obtaining all third party permits necessary.

To ensure that the design, construction and operation of the facility is conducted in a manner that protects public health and safety in accordance with the Organizational Expertise standard, Council previously imposed Organizational Expertise Conditions 1, 2 and 3 (GEN-OE-01, PRE-OE-01, and GEN-OE-02) requiring that, prior to construction, the certificate holder provide qualifications of its contractors to the Department for review; contractually require its

[21] MSEFAPPDoc1-4 Exhibit D Applicant Expertise 2020-11-09, p. D-1.
[22] MSEFRFA1 Certificate Holder RAI Responses 2024-09-09

contractors to comply with site certificate requirements; and provide the Department notification of any changes in the certificate holder owner's corporate structure.

Based upon the findings presented here and compliance with existing site certificate conditions, the Department recommends that Council continue to find that the certificate holder has the ability to design, construct, operate, and retire the facility, with proposed RFA1 changes, in compliance with Council standards and site certificate conditions.

III.B.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with existing conditions and recommended amended conditions, the Department recommends Council find that the certificate holder has the organizational expertise to construct, operate and retire the facility, with proposed RFA1 changes, in compliance with Council standards and conditions of the site certificate.

III.C. STRUCTURAL STANDARD: OAR 345-022-0020

> *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:*
>
> *(a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site; and*
>
> *(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a);*
>
> *(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and*
>
> *(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).*
>
> *(2) The Council may not impose the Structural Standard in section (1) to approve or deny an application for an energy facility that would produce power from wind, solar or geothermal energy. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

(3) The Council may not impose the Structural Standard in section (1) to deny an application for a special criteria facility under OAR 345-015-0310. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.[23]

III.C.1. Findings of Fact

The analysis area for the Structural standard is the area within the site boundary. The evaluation of historic seismic and potentially active faults extends 50-miles from the site boundary.

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard.

2021 Geotechnical Investigation – Evaluation of Seismic and Nonseismic Hazards

Since the Council's approval of the Final Order on the ASC, certificate holder completed a Site-Specific Geotechnical Investigation in 2021. The Site-Specific Geotechnical Investigation was completed by Terracon Consultants, Inc, and authorized by registered professional engineer, Kristopher T. Hauck (78373PE). Based on the 2021 Site-Specific Geotechnical Investigation, seismic hazards at the site include strong earthquake shaking and landslide susceptibility (low within the site and high on surrounding slope areas). Three fault zones were identified: Warm Springs fault zone (Class A); Metolius fault zone (Class A) and Sisters fault zone (Class A), of which were determined to present low risk of surface rupture at the site.

Conditions previously imposed that would address risks from earthquake shaking and landslide susceptibility include:

- Structural Standard Condition 2 (GEN-SS-01): Requires the certificate holder to design, engineer and construct facility components based on Site Class (soils-related category) determined through the site-specific geotechnical investigation in PRE-SS-01.
- Structural Standard Condition 3 (GEN-SS-02): Requires the certificate holder to design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards.
- Structural Standard Condition 4 (GEN-SS-03): Requires the certificate holder to notify the Department, the State Building Codes Division and the DOGAMI promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the ASC.
- Structural Standard Condition 5 (GEN-SS-04): Requires the certificate holder to notify the Department, the State Building Codes Division and the DOGAMI promptly if shear

[23] OAR 345-022-0020, effective October 18, 2017, as amended by minor correction filed May 28, 2019.

zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

Results of the 2021 Site-Specific Geotechnical Investigation identified that the entire site is believed to be underlain by cemented soil and/or massive basaltic bedrock. This type of subsurface condition reduces the ability to use direct piledriving for solar panel piles and substation foundation. Sample set pre-drilling is recommended to inform embedment design. Shallow excavations could result in sloughing and erosion channels. Temporary sidewall supports for excavation and site grades are recommended.

Council previously imposed Structural Standard Condition 3 (GEN-SS-02), as described above. The condition requires that the certificate design the facility to avoid dangers from seismic hazards. While not explicitly stated, the Department would apply the results of the Site Specific Geotechnical Investigation to the review of this condition to ensure that recommendations of the site-specific geotechnical investigation are implemented or adequately addressed.

III.C.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above, the Department recommends that the Council find the certificate holder has adequately characterized potential seismic and geologic hazards at the site and can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by those hazards.

III.D. SOIL PROTECTION: OAR 345-022-0022

> *To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.*[24]

III.D.1. Findings of Fact

The analysis area for the Soil Protection standard is the area within the site boundary.

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard.

[24] OAR 345-022-0022, effective May 15, 2007.

The two major soil types within the analysis area are Cullius Loam and Madras Loam.[25] Additionally, all land within the analysis area is Exclusive Farm Use (A-1) zoned land, within Jefferson County.

Potential soil-impacting construction activities include: clearing and grubbing of vegetation in temporary construction areas, construction of new access roads, heavy equipment and haul truck traffic for the delivery of aggregates, concrete, water, drill rigs, and similar construction supplies, and fueling or maintenance of construction equipment or vehicles. These activities can lead to wind or water erosion, compaction, changes in drainage patterns, or spills or releases of chemicals or other liquid materials used during construction.[26]

Council previously imposed conditions to minimize soil impacts from the activities. Council previously imposed Soil Protection Condition 1 (GEN-SP-01) requiring that the certificate holder obtain and implement a National Pollutant Discharge Elimination System (NPDES) 1200-C permit, which regulates and manages stormwater by applying best management practices (BMPs) to reduce erosion and sedimentation.

Council previously imposed Soil Protection Condition 2 (PRO-SP-02) requiring that, prior to and during operations, the certificate holder develop and implement a Spill Prevention Control and Countermeasure Plan (SPCC) for the site, and Hazardous Materials Business Plan (HMBP) for the battery storage system, which would include an inventory of both hazardous and nonhazardous materials. Council previously imposed Soil Protection Condition 3 (OPR-SP-02) limiting the methods for and types of cleaners that may be used for solar panel washing during operations.

III.D.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above, the Department recommends the Council find that the facility, with proposed RFA1 changes, is not likely to result in significant adverse impacts to soils.

III.E. LAND USE: OAR 345-022-0030

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use

[25] NRCS Websoil Survey Tool. June 2024.

[26] MSEFAPP ASCDoc1-9 Exhibit I Soils 2002-11-09.

approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.[27]

III.E.1. Findings of Fact

The Land Use standard requires the Council to find that the facility, with proposed RFA1 changes, would continue to comply with local applicable substantive criteria, as well as the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC).[28]

The analysis area for potential land use impacts, as defined in the project order, is the area within and extending ½ mile from the site boundary. The site boundary and analysis area are located entirely within Jefferson's County Exclusive Farm Use A-1 (EFU A-1) zone.[29]

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard.

Local Applicable Substantive Criteria

"Applicable substantive criteria" previously recommended by the Council appointed Special Advisory Group (SAG), Jefferson County Board of Commissioners, were based on the zoning provisions and goals and policies established in the Jefferson County Zoning Ordinance (JCZO) and Jefferson County Comprehensive Plan (JCCP), as amended in 2018 and 2013, respectively. Neither the JCZO or JCCP have changed in a manner that would impact Council's previous analysis. Therefore, the Council may rely on its previous findings and conclusions of law as evaluated in the *Final Order on ASC*.[30]

The applicable substantive criteria from JCZO and goals and policies from JCCP are presented below in Table 3, *Jefferson County Applicable Substantive Criteria*.

[27] OAR 345-022-0030, effective September 3, 2003, as amended by minor correction filed May 28, 2019.
[28] The Council must apply the Land Use standard in conformance with the requirements of ORS 469.504.
[29] MSEFAPP pASC Reviewing Agency SAG Comment Jefferson Co._Stenbeck 2019-12-18.
[30] MSEFAPPDoc4-1 Final Order with Attachments 2021-08-02, pp. 41-105.

Table 3: Jefferson County Applicable Substantive Criteria

Jefferson County Zoning Ordinance (JCZO)	
Chapter 3 Land Use Zones	
Section 301	Exclusive Farm Use Zones
Section 322	Sensitive Bird Habitat Overlay Zone
Chapter 4 Supplementary Provisions	
Section 401	Access
Section 402	Transportation Improvements
Section 403	Clear-Vision Areas
Section 404	Fences
Section 405	Outdoor Lighting
Section 406	Sign Regulations
Section 414	Site Plan Review
Section 415	Soil or Rapid Moving Landslide Hazard Procedures
Section 416	Grading, Fill and Removal
Section 417	Historic Resource Protection
Section 418	Airport Protection
Section 419	Riparian Protection
Section 420	Endangered Species
Section 421	Traffic Impact Studies
Section 422	Temporary Uses
Section 423	Off-Street Parking Requirements
Section 426	Fire Safety Standards
Section 429	Archeological Preservation
Section 433	Photovoltaic Facilities
Chapter 6 Conditional Uses	
Section 601	Authorization to Grant or Deny Conditional Uses
Section 602	Approval Criteria
Section 603	Conditions of Approval
Comprehensive Plan	
Goal 3: Agricultural Lands	
Goal 5: Natural Resources, Scenic and Historic Area, and Open Spaces	
Goal 6: Air, Water, and Land Resources Quality	
Goal 7: Areas Subject to Natural Hazards	
Goal 8: Recreational Needs	
Goal 9: Economic Development	
Goal 11: Public Facilities and Services	
Goal 12: Transportation	
Goal 13: Energy Conservation	

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Council previously imposed six site certificate conditions related to applicable local ordinance requirements (Land Use Condition's 1 through 6).[31] These previously imposed conditions would continue to apply to the facility with proposed RFA1 changes.

Directly Applicable State Rules and Statutes

There have been no changes to LCDC's solar rules at OAR 660-033-0130(38)(h) since Council's 2021 *Final Order on ASC.* However, the Department evaluated changes in the county's noxious weed list to determine if any changes to the previously approved Noxious Weed Plan are warranted under OAR 660-033-0130(38). OAR 660-033-0130(38) requires that construction and maintenance activities associated with solar facilities not result in unabated introduction or spread of noxious weeds and other undesirable species. Council previously imposed Fish and Wildlife Condition 2 (GEN-FW-02) requiring that the certificate holder finalize and implement a Noxious Weed Control Plan.

Since the Council's *Final Order on ASC*, Jefferson County's Weed List includes four Noxious Weeds that were not included or represented in the ASC or the draft Noxious Weed Control Plan. These four weeds and their County Weed Designation are: Common purslane (C List); False brome (A List); Field morning glory (B List); and Whitetop (B List). Fish and Wildlife Condition 2 (GEN-FW-02) requires that, prior to construction, the certificate holder finalize the Noxious Weed Control Plan based on review of Jefferson County's current noxious weed list at the time (to determine the weeds to be evaluated during the preconstruction noxious weed survey) and completion of a preconstruction noxious weed survey, to then determine appropriate preconstruction and short- and long-term treatment and monitoring plans to be applied during construction and operation. Based on the existing requirements of the condition, any changes in Jefferson County's noxious weed list will be accounted for prior to construction. The Department recommends Council continue to find compliance with OAR 660-033-0130(38)(h)

Goal 3 Exception

In the *Final Order of the ASC,* pursuant to ORS 469.504(2)(c), the Council granted a Goal 3 exception for ~~the~~ 284 acres of nonarable land that could be occupied by facility components, subject to compliance with site certificate conditions. The reasons Council determined supported granting an exception were that the facility site is locationally dependent, use of the site for an energy facility ~~the facility~~ would not have direct impacts to agricultural uses, and that the site provides unique characteristics from the perspective of minimal to no direct or indirect impacts to other resources protected under Council's standards.

[31] The Department administratively updated the "Type of Condition/Phase of Implementation" of Land Use Condition 6 (GEN-LU-05). Identified as a "General Condition ([GEN])" in the Final Order on ASC, the requirements of the condition apply to preconstruction. Therefore, the Department has updated the condition coding/number to "PRE-LU-02" and relocated the condition to be a preconstruction condition. No edits were made to the condition language or requirements.

The evaluation of one of the reasons, locational dependence, is re-opened in this order based on facts and arguments provided by CTWS.[32] Previously, Council determined this to be a reason justifying a Goal 3 exception because the facility site provided immediate onsite interconnection to an existing transmission line, the 230-kV Pelton to Round Butte transmission line, eliminating the need for the facility to include construction of a new transmission line for grid interconnection. CTWS and Portland General Electric (PGE) are joint owners of the 230-kV Pelton to Round Butte transmission line. Based on CTWS' DPO comments, CTWS has not agreed to allow the certificate holder to interconnect to the line. They have argued against the legitimacy of this reason because the Council relied upon it, yet certificate holder does not have the assurance in can utilize it.

On the record of the Final Order on the ASC, the Council did not rely on evidence assuring the certificate holder's ability to interconnect to the line. Rather, it based its decision on the potential for the certificate holder/facility to interconnect to the line and the fact that interconnection to this specific line eliminated the need for construction of another transmission line. Therefore, the Department recommends Council find that there are no changes in the underlying facts that would warrant a change in the determination that the locational dependence reason is a justifiable reason for a Goal 3 exception.

Nevertheless, the only option for grid interconnection to transmit energy generated by the facility to the grid is the 230-kV Pelton to Round Butte transmission line. If the facility is built, this reason will be realized through an agreement for interconnection between line owner(s) and certificate holder. To ensure there is understanding between line owners, certificate holder and the Council that an agreement must be reached in order for the facility to be constructed, the Department recommends Councill impose the following condition requiring that, prior to construction of the facility or facility component, as applicable, the certificate holder demonstrate that it has executed an agreement with the owners to interconnect to the 230 kV Pelton to Round Butte transmission line.

> **Recommended Land Use Condition 7 [PRE]:** Before beginning construction of the facility or facility component, as applicable, the certificate holder shall demonstrate that it has executed an interconnection agreement with the owner(s) of the 230 kV Pelton to Round Butte transmission line.
> [PRE-LU-03, AMD1]

~~Because RFA1 does not propose any changes to the site boundary or facility design that would change these previous findings, the Department recommends Council maintain its prior exception.~~

[32] MSEFAMD1 DPO Comments Tribal Gov CTWS 2024-12-05. On the record of the DPO, CTWS expressed concerns that it had not consented to access any capacity on the Pelton generator line and interconnection to the Northwest power grid; and argued that Council's prior approval of the goal exception, and determination that the facility is locationally dependent, cannot be made to meet its standards.

III.E.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above, the Department recommends the Council find that the facility, with proposed RFA1 changes, will comply with the statewide planning goals adopted by the Land Conservation and Development Commission.

III.F. PROTECTED AREAS: OAR 345-022-0040

(1) To issue a site certificate, the Council must find:

(a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363;

(b) The design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for:
(a) A facility that includes a transmission line, natural gas pipeline, or water pipeline located in a protected area, if the Council determines that other reasonable alternative routes or sites have been studied and that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or

(b) Surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and are unsuitable.

(3) The provisions of section (1) do not apply to:

(a) A transmission line routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or

(b) A natural gas pipeline routed within 500 feet of an existing utility right of way containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

(4) The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.[33]

III.F.1. Findings of Fact

The analysis area for the Protected Areas standard is the area within and extending 20 miles from the site boundary.[34] Since the Council's 2021 *Final Order on ASC*, the Protected Areas standard was amended; those changes are evaluated below.[35]

Protected Areas in the Analysis Area

There are 15 protected areas within the analysis area; protected areas not previously evaluated are highlighted in "green." These areas are discussed further in this section.

Table 4: Protected Areas within the 20-mile Analysis Area

Protected Area	Approx. Distance from Proposed Site Boundary (miles)	Direction from Proposed Site Boundary	Basis for Protection (OAR 345-001-0010)
The Cove Palisades State Park	3.0	South	(j) State Parks & Waysides
Central Oregon Agriculture Research and Extension Center	3.5	East	(q) Oregon State University Agricultural

[33] OAR 345-022-0040, effective December 19, 2022.

[34] Under OAR 345-027-0360(3), the analysis area for a request for amendment is the larger of either the study area, as defined in OAR 345-001-0010, or the analysis area described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference. The study area for impacts to protected areas under OAR 345-001-0010(35)(e) is the area within and extending 20 miles from the site boundary. The analysis area for impacts to protected areas established in the Project Order is the area within and extending 5 miles from the site boundary.[34] Because the study area under OAR 345-001-0010 is larger, and because the certificate holder has not requested a smaller study area, the analysis area in this Order is 20 miles within and extending from the site boundary.

[35] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 117.

Table 4: Protected Areas within the 20-mile Analysis Area

Protected Area	Approx. Distance from Proposed Site Boundary (miles)	Direction from Proposed Site Boundary	Basis for Protection (OAR 345-001-0010)
			Experiment Stations or Research Centers
Round Butte Hatchery	4.1	South	(p) State Fish Hatcheries
Lower Deschutes Wild and Scenic River – from Pelton Dam downstream to the north county line	4.2	North	(d) National Wild, Scenic, or Recreational Rivers
Lower Deschutes River State Scenic Waterway*	4.2	North	(n) State Scenic Waterways
The Island Area of Critical Environmental Concern	6.3	South	(i) Federal Administratively Designated Lands
Deschutes Canyon-Steelhead Falls Wilderness Study Area	8.9	South	(h) Wilderness Study Areas
Upper Deschutes River State Scenic Waterway*	11.6	South	(n) State Scenic Waterways
Middle Deschutes Wild and Scenic River – from Odin Falls to the upper end of Lake Billy Chinook	11.6	South	(d) National Wild, Scenic, or Recreational Rivers
Metolius Wild and Scenic River – from Deschutes National Forest boundary to Lake Billy Chinook	12.0	West	(d) National Wild, Scenic, or Recreational Rivers
Lower Crooked Wild and Scenic River – from the National Grasslands boundary to Dry Creek	12.8	South	(d) National Wild, Scenic, or Recreational Rivers
Haystack Butte RNA	13.1	Southeast	(i) Federal Administratively Designated Lands
Warm Springs National Fish Hatchery	13.4	North	(f) National Fish Hatcheries
Peter Skene Ogden State Scenic Viewpoint	18.4	South	(j) State Parks & Waysides
Smith Rock State Park	19.6	South	(j) State Parks & Waysides

Source: MSEFAMD1 RFA1 2024-10-17, Table 3.
* Lower and Upper Deschutes River State Scenic Waterway is identified as a protected area not previously evaluated; however, these resources are the same resource as the area designated under National Wild, Scenic, or Recreational Rivers but also designated as a State Scenic Waterway.

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Round Butte Hatchery

The Round Butte Hatchery is located at the base of the Round Butte Dam, with a satellite rearing facility located at the former fish passage ladder at the base of the Pelton reservoir. The Hatchery was constructed in 1972 to mitigate for the fishery losses caused by the Pelton/Round Butte (PRB) Hydroelectric Complex, and is used for adult collection, egg incubation and rearing of spring chinook, and summer steelhead.[36] Public access is available by advance arrangement with ODFW only.

Lower Deschutes River State Scenic Waterway

Under OAR 390.826(5), the segment of the Deschutes River from the Pelton Dam to the confluence of the Deschutes River, excluding lands within the City of Maupin, is designated as a State Scenic Waterway. This river segment is also designated at the federal level as the Lower Deschutes Wild and Scenic River, which was considered in the *Final Order on ASC*.[37]

Upper Deschutes River State Scenic Waterway

Under ORS 390.826(5), the segment of the Deschutes River from Deschutes Market Road Bridge downstream to the Lake Billy Chinook Reservoir is designated as a State Scenic Waterway. This segment is also included in the federally designated Middle Deschutes Wild and Scenic River; which was considered in the *Final Order on ASC*.[38]

Haystack Butte Research Natural Area

The Haystack Butte RNA is located within the Crooked River National Grassland of the Ochoco National Forest. The area was designated in 2003 to protect the ecological integrity of the largely intact juniper/big sagebrush/Idaho fescue plant communities located on the upper parts of the butte. Due to the lack of access and isolation of the upper reach of the Butte, recreational use of the area is minimal.[39]

Figure 2 below shows the protected areas identified above in relation to the site boundary.

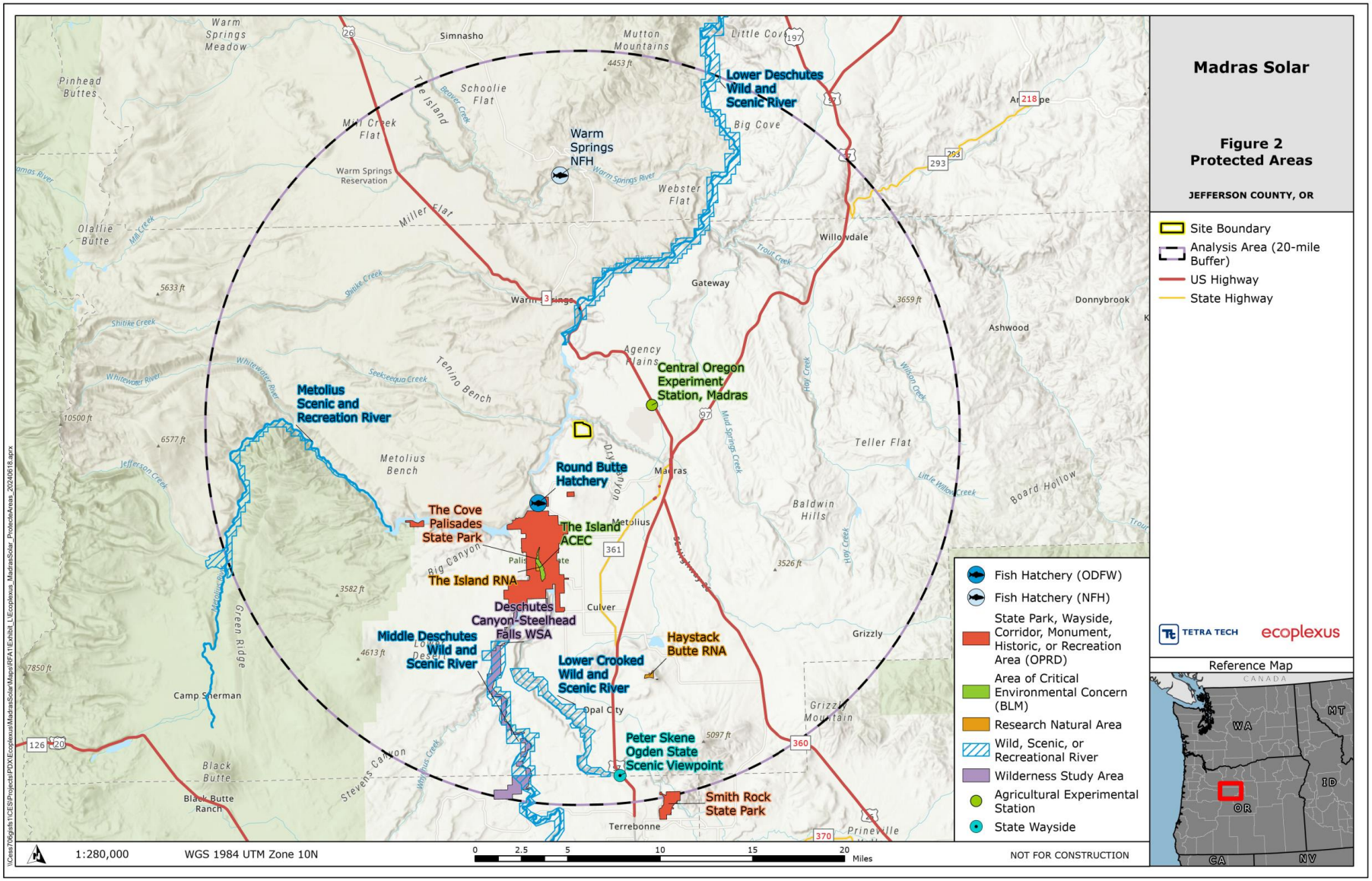
[36] ODFW. Round Butte Fish Hatchery Program Management Plan. 2023.

[37] MSEFAMD1 RFA1 2024-10-17, Section 6.6., Bureau of Land Management. Lower Deschutes River Management Plan Record of Decision. 1993.

[38] MSEFAMD1 RFA1 2024-10-17. Section 6.6. Bureau of Land Management. Middle Deschutes/Lower Crooked Wild and Scenic Rivers' Management Plan. 1992.

[39] MSEFAMD1 RFA1 2024-10-17. Section 6.6, U.S. Forest Service. Establishment Record for Haystack Butte Research Natural Area within Ochoco National Forest, Crooked River National Grassland, Jefferson County, Oregon. 2003. Oregon Natural Areas Plan 2015.

Figure 2: Protected Areas Within the RFA1 Analysis Area



Potential Impacts on Protected Areas

There are no changes proposed in RFA1 that would alter the previously evaluated noise levels, transport or haul routes, water use or wastewater disposal, or visual impacts that would result from the construction and operation of the facility; the Department recommends the Council continue to rely on its previous findings with regard to all previously considered protected areas.

As discussed above, the certificate holder identified four additional protected areas which were not previously considered by the Council. As noted, two of these newly identified protected areas, the Upper and Lower Deschutes State Scenic Waterways, are located on the same segments of the Deschutes River as the previously evaluated Lower and Middle Deschutes Wild and Scenic Rivers. The Council found that the construction and operation of the facility was not likely to result in significant adverse impacts to these federally protected river segments.[40] Because both the state and federal designations protect the same resources for similar purposes, the Department recommends that the Council rely on these previous findings with regards to the Upper and Lower Deschutes State Scenic Waterways.

The potential impacts to the two remaining newly identified protected areas are discussed in more detail below.

<u>Potential Visual Impacts</u>

Haystack Butte RNA - Council previously found that the tallest facility components that may create a visual impact are the 80-foot-tall transmission support poles and the 10-foot pad-mounted inverters and transformers located throughout the area within the facility's security fence. Council previously found that protected areas at 5 miles or further there would not likely be visual impacts from the facility due to distance, topography, and vegetative screening, therefore it is not anticipated that there would be any visual impacts at the Haystack Butte RNA, 13.1 miles away.

Round Butte Hatchery - In the *Final Order on ASC*, visual impacts were evaluated at Cove Palisades State Park, located 3.1 miles south of the facility. A photo survey documented existing views from three viewpoints in The Cove Palisades State Park Master Plan and one additional location along the Crest of Tam-A-Lau Trail that offers a view toward the facility from a higher elevation. Council previously found that the photographs demonstrate that views of the facility site from the selected locations would be precluded by existing elevation and topography.[41] Round Butte Hatchery is located 4.1 miles from the facility in the same direction as Cove Palisades State Park. The Hatchery is managed to raise spring Chinook, summer steelhead, and sockeye salmon, does not have public open access and is not managed for recreational or scenic qualities. For these reasons there would not be visual impacts at Cove Palisades State

[40] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 111-117.

[41] MSEFAPPDoc1-12_Exhibit_L_Protected_Areas 2020-11-09, pg. L-7, Attachment L-1, Photograph L-1 to L-4.

Park, and because Round Butte Hatchery is further away, the Department recommends Council find that there would not be adverse visual impacts at this protected area.

Potential Noise Impacts

Construction Noise - Potential noise impacts from construction and operation of the facility are summarized in Section IV.A., *Noise Control Regulations*, of this order. Council previously found that construction noise levels are expected to attenuate to 44 to 50 dBA at a distance of 1 mile, and at a distance of 3.1 miles, the distance to Cove Palisades State Park, the protected area nearest to the site, construction related noise were expected to attenuate to below levels that are discernable from ambient background noise.[42] Because there are no proposed changes to the design of the facility that would increase construction related noise levels, and because the closest protected area (Round Butte Hatchery) not previously evaluated is 4.1 miles away, the Department recommends Council find that construction-related noise would not impact Round Butte Hatchery or impede the use of the protected area.

Operational Noise - The certificate holder's noise analysis estimated that noise generated by these components would attenuate to approximately 29 dBA (or 26 dBA without battery components) within 0.5 miles of the site boundary.[43] At 3.1 miles, the distance to the Cove Palisades State Park, the protected area nearest to the site, the noise analysis indicated that operational noise was expected to attenuate to below detectable levels.[44] Council previously found that the certificate holder's noise assessment estimated that operational noise would attenuate to approximately 29 dBA within 0.5 miles of the site boundary.[45] The Council found that operational noise from the facility was not likely to result in significant adverse noise impacts to the Cove Palisades State Park or other protected areas within the analysis area.[46] Because there are no proposed changes to the design of the facility that would increase operational noise levels, and because there are no new or newly identified protected areas in closer proximity to the site, the Department recommends the Council continue to rely on its previous findings.

Potential Traffic-related Impacts

The primary transportation routes to and from the facility site would be US Highway 26 from the north and US 97 from the south. From US Highway 26, the primary transportation route would enter the City of Madras and continue south to the intersection with US 97. The route would continue due south on US 97 for approximately 0.95 mile to SW Belmont Lane, where it turns west and continues for approximately 5.7 miles to SW Elk Drive. From SW Belmont Lane, the route then turns north on SW Elk Drive and extends for approximately 2.5 miles to the

[42] MSEFAPPDoc1-12_Exhibit_L_Protected_Areas 2020-11-09.
[43] MSEFAPPDoc1-24_Exhibit_X_Noise 2020-11-09, p. X-5-6.
[44] MSEFAPPDoc1-12_Exhibit_L_Protected_Areas 2020-11-09, pg. L-3.
[45] MSEFAPPDoc1-24_Exhibit_X_Noise 2020-11-09, p. X-5-6.
[46] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 112.

facility site.[47] In the *Final Order on ASC*, the Council found that construction of the facility would not be likely to result in a significant adverse impact to traffic safety on routes serving the facility site. Backups and delays associated with construction traffic are likely to be limited to SW and NW Elk Drive and SW Belmont Lane which provide local access to the facility site.[48]

The Haystack Butte RNA is located to the east of highway 97, and is not likely to be affected by slowdowns on SW and NW Elk Drive and SW Belmont Lane. The Round Butte Hatchery is located at the end of SW Belmont Lane, and would likely be affected by temporary and intermittent construction related slowdowns, however, public access to the hatchery is only available by advance arrangement and impacts are not likely to affect large numbers of visitors. In addition, the Council previously imposed Condition GEN-PS-01, requiring the certificate holder to develop and implement a Construction Traffic Management Plan to minimize traffic related impacts. Because construction traffic related impacts would be temporary and intermittent, would only affect a small number of visitors to the Round Butte Hatchery, and would be minimized by existing conditions, the Department recommends the Council find that traffic associated with construction of the facility is not likely to have a significant adverse impact on the Round Butte Hatchery.

The Council previously found that operational traffic would only result in minimal traffic impacts because the facility would be operated remotely without need any full-time, onsite employees.[49] The Department recommends the Council continue to rely on this previous finding.

Potential Water-Related Impacts

In the *Final Order on ASC*, the Council found that draws within the Deschutes Valley Water District's existing water rights are not likely to result in significant impacts to instream flows in protected river segments located downstream from the water source.[50] The Department recommends the council continue to rely on this previous finding with regard to impacts to the Round Butte Fish Hatchery.

Based on the minimal amounts of wastewater and permitting requirements to minimize off-site runoff, the Council found that facility construction and operational wastewater disposal would be unlikely to result in a significant adverse impact to any protected areas, including protected waterways, within the analysis area.[51] Because no changes to the amount of water that would be disposed or methods of control are proposed in RFA1, the Department recommends the Council continue to rely on its previous findings.

[47] MSEFAPPDoc1-12 Exhibit L Protected Areas 2020-11-09, pg. L-3
[48] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 112-113.
[49] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 112.
[50] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 113-114.
[51] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 114.

III.F.2. Conclusions of Law

Based on the foregoing analysis described above, the Department recommends the Council find that the facility, with proposed RFA1 changes, is not located within the boundaries of a protected area and that the design, construction and operation of the facility, with the proposed RFA1 changes, are not likely to result in significant adverse impact to any protected areas.

III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050

To issue a site certificate, the Council must find that:

(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.[52]

III.G.1. Findings of Fact

OAR 345-027-0375(2)(e) designates that the Scope of Council's Review for all site certificate amendments is to determine whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate. As presented below, the scope of the evaluation under OAR 345-022-0050 for RFA1 is an evaluation associated with updated unit costs for facility components, tasks, and actions associated with decommissioning each type of facility component. Certificate holder also provides updated evidence of their ability to secure a bond or letter of credit that reflects the updated cost to restore the site to a useful, nonhazardous condition.

Restoration of the Site Following Cessation of Construction or Operation

OAR 345-022-0050(1) requires that the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. Restoring the site to a useful, nonhazardous condition for the facility is the same as Council previously approved and includes:

- Preparation the facility site for retirement and restoration, which includes maintaining internal service roads and access roads, fencing, and electrical power in place for use by the retirement and restoration workers until no longer needed. Mobilization of decommissioning equipment, set up construction management offices/tailers and

[52] OAR 345-022-0050, effective April 3, 2002.

facilities, and site preparation. Conduct safety, training, and project orientations with work crews.

- Disconnect electrical power to panels. Remove solar panels from trackers and load onto recycler's trucks. Remove steel trackers from posts, extract steel posts, and stage for recycling from site. Disconnect electrical equipment from underground cables. Excavate any concrete foundations, load and transport for disposal. Maintain the underground cables in place except where they surface, then cut and remove to 3 feet below grade and transport. Decompact as necessary and reseed areas.
- Disconnect electrical power. Stage large transformers, drained of oil, and stage lithium-ion battery units onsite or load onto scrap recycler trucks. Truck substation electrical equipment and inverters to recycle and dispose. Remove concrete equipment foundations to a minimum depth of 3 feet and truck to the county transfer station. Decompact as necessary and reseed areas.
- Remove internal gravel access road segments and gravel from substation and laydown yards. This will result in stockpiling of reusable gravel onsite for loading by recycler/reuser. Decompact roads includes discing and regrading. Reseed areas.
- Stage steel fences and gates onsite and load onto scrap recycler trucks. Stage copper cable from substation grounding grid onsite for recycler.

In preparation of RFA1, the certificate holder provided a retirement cost estimate in a format that is different from which Council previously evaluated. The format provided in RFA1 is consistent with other Council-approved energy facilities and breaks down the cost estimate by each type of facility component. In reviewing the cost estimate and amendment, the Department verifies that all the tasks and actions associated with retiring a type of facility component and the quantities of each type of component are appropriate. Important assumptions associated with the retirement tasks, actions, and the below updated cost estimate to retire the facility include:

- Estimate includes wages for superintendent, differing wages operators for various necessary equipment, electricians, general laborers, and union labor.
- Solar panel removal assumes 20 panels per laborer per hour, which includes packaging and preparing for shipment offsite. Solar post removal assumes production a crew of one excavator with shear, one excavator with grapple, two operators and two laborers and includes post removal and sizing of steel for sale as scrap, and loadout to haul trucks.
- The estimate assumes no salvage value recovery for materials to be disposed of by way of recycling.
- All concrete and substation electrical equipment (other than transformers) is trucked to Jefferson County Transfer Station (JCTS) for a recycling decision and disposed of by JCTS and their recycling partners.
- Estimate assumes that the entire area occupied by the solar modules (approximately 300 acres) will be reseeded (or likely overseeded).

The Council's rules include several mandatory site certificate conditions, which were imposed in the *Final Order on ASC*, which would continue to apply to the facility. Retirement and Financial Assurance Condition 1 (GEN-RF-01) specifies the obligation of a certificate holder to prevent the development of conditions on the site that would preclude restoration of the site. Retirement and Financial Assurance Conditions 2 and 3 (RET-RT-01, and RET-RT-02) require the certificate holder to obtain Council approval of a retirement plan in the event that the facility ceases construction or operation, and if no plan is submitted the Council may develop its own plan and draw upon the bond held to restore the site.

Estimated Costs of Site Restoration

In the *Final Order on ASC*, the Council determined that the amount necessary to restore the site to a useful, non-hazardous condition was approximately $4.1 million in Q4 2019 dollars. With additional contingencies for bonding, administration, and future development, the total amount of financial assurance required under Retirement and Financial Assurance Condition 4 (PRE-RF-01) is $4.9 million.[53]

RFA1, Section 6.7 and Attachment 4, include an updated cost estimate to retire the facility, in Q4 2024 dollars. The decommissioning cost estimate in includes contractor mark ups and contingencies previously approved by Council. As noted above, the updated retirement cost estimate was provided in a format familiar to the Department and Council and the Department reviewed and verified that the unit costs and quantities of each type of facility component are appropriate and that there is a line item cost associated with each task for retiring each type of component. Therefore, the Department recommends Council find that the tasks, actions, assumptions, and unit costs associated with the updated retirement cost estimate are appropriate. Based on this data, the Department recommends Council find that the updated cost to retire the facility to a useful, nonhazardous condition, including contingencies, is approximately $4.5 million, as presented in Table 5, below.

Table 5: Updated Retirement Cost Estimate

Task or Component	Quantity	Unit	Unit Cost ($)	Estimate ($)
1.1 Mobilization /Demobilization				
1.1.1 Equipment Mob	1	Lump Sum	40,600.00	40,600.00
1.1.2 Site Facilities	1	Lump Sum	2,200.00	2,200.00
1.1.3 Crew - Mob & Site Setup	3	Day	9,202.51	27,607.53
1.1.4 Crew - Demob & Site Cleanup	2	Day	9,202.51	18,405.02
			Subtotal	***88,812.55***
1.2 Project Site Support				

[53] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, Table 3, pg. 124-125.

Table 5: Updated Retirement Cost Estimate

Task or Component	Quantity	Unit	Unit Cost ($)	Estimate ($)
1.2.1 Site Facilities	4	Month	1,305.00	5,220.00
1.2.2 Field Management	4	Month	44,599.70	178,398.80
			Subtotal	***183,618.80***
1.3 Substation / Switchyard Retirement				
1.3.1 Fence Removal	1	Day	1,429.00	1,429.00
1.3.2 Transformer Removal	1	Each	96,135.90	96,135.90
1.3.3 Control Building Removal	1	Each	2,624.50	2,624.50
1.3.4 UG Utility & Ground Removal	2	Day	1,429.00	2,858.00
1.3.5 Remove Foundations	600	Cubic Yard	30.78	18,468.00
1.3.6 Misc. Material Disposal	1	Lump Sum	2,200.00	2,200.00
1.3.7 Restore Yard	1	Lump Sum	68,334.28	68,334.28
			Subtotal	***192,049.68***
1.4 230 kV Transmission Line Retirement				
1.4.1 Structure and Cable Span Removal	4	Each	4,921.57	19,686.28
1.4.2 Remove Foundations to Subgrade	4	Each	5,390.68	21,562.72
			Subtotal	***41,249.00***
1.5 34.5 kV Collector Line Tray and Cable				
1.5.1 Remove Tray & Cable	4	Miles	$9,830.31	39,321.24
1.5.2 Trucking - Per Load	12	Each	1,500.00	18,000.00
			Subtotal	***57,321.24***
1.6 Battery Storage System Removal				
1.6.1 Battery Removal & Disposal	63	MW	$2,195.16	138,295.07
1.6.2 Structure & Components Removal	63	MW	$883.52	55,662.06
			Subtotal	***193,957.13***
1.7 Solar Array Retirement				

Table 5: Updated Retirement Cost Estimate

Task or Component	Quantity	Unit	Unit Cost ($)	Estimate ($)
1.5.1 Fence Removal	23,306	Linear Feet	1.39	32,395.34
1.5.2 Inverter/Transformer Removal	19	Each	2,253.96	42,825.24
1.5.3 Remove Foundations To Subgrade	19	Each	2,954.89	56,142.91
1.5.4 Solar Panel Removal & Disposal	137,673.00	Each	7.65	1,053,198.45
1.5.5 Solar Rack (Trackers) & Post Removal	1	Lump Sum	777,887.65	777,887.65
			Subtotal	***1,962,449.59***
2.0 O&M Building Removal[4]				
Structure Demo	1	Each	$2,624.50	2,624.50
Fence Removal	1	Day	$1,429.00	1,429.00
			Subtotal	***4,053.50***
1.8 Site Restoration				
1.8.1 Decompact Roads	5,000	Linear Feet	1.01	5,050.00
1.8.2 Spot Grade Disturbed Areas	284[4]	Acre	316.81	89,974.04
1.8.3 Re-Seed w Native Vegetation - Roads & Areas Disturbed By Construction	284[4]	Acre	1,000.00	284,000.00
			Subtotal	***379,024.04***
Total Decommissioning Cost				***3,102,535.53***
Contractor Markups				
Home Office, Project Management	0.05		155,126.78	
Contractor OH & Fee			0.13	423,496.10
			Subtotal	***578,622.88***
Total Decommissioning Cost				***3,681,158.41***
Performance Bond			0.01	36,811.58
			Gross Cost	***3,717,969.99***

Table 5: Updated Retirement Cost Estimate

Task or Component	Quantity	Unit	Unit Cost ($)	Estimate ($)
ODOE/EFSC Contingencies				
	Basis (% of Cost)	**Basis ($)**	**Contingency**	**Estimate ($)**
Administration and Project Management	100%	3,717,969.99	0.10	371,797.00
Future Development (Exclude Battery)	94%	3,485,538.55	0.10	348,553.85
Future Development (Battery Only)	6%	232,431.44	0.20	46,486.29
			Subtotal	***766,837.14***
TOTAL ESTIMATED COST ($Q4 2024)				**4,484,807.13**
ROUNDED				**4,485,000.00**

Notes:

1. See ASC Exhibit X Attachment X-1 for detailed breakdown of tasks, actions and unit costs for the sum total costs presented in this Table.
2. To allow continued use of the land for agricultural or other purposes deemed appropriate at the time of decommissioning purposes, all subsurface features including underground collector lines and concrete foundations associated with the O&M, Substation, Solar, Battery, Transmission Line, and Met towers will be removed under the Final Order on ASC, or as agreed with the landowner, in a final Retirement Plan.
3. Tasks associated with a Lump Sum unit cost may be calculated using a fraction (in decimal form) of the actual quantities constructed or by using the more detailed breakdown of unit costs associated with the Lump Sum task identified in the cost estimating worksheet in ASC Exhibit X, Attachment X-1.
4. Added or modified by Department.

To reflect the updated cost estimate to retire the facility and to incorporate condition changes recommended in Section III.B. *Organizational Expertise*[54], the Department recommends Council amend Retirement and Financial Assurance Condition 4 (PRE-RF-01) as follows:

> **Recommended Amended Retirement and Financial Assurance Condition 4 [PRE]:** Before beginning construction of the facility or a facility component, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is $4.5~~4.9~~ million dollars (Q4 2024~~19~~ dollars), to be adjusted to the effective date, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition:
>
> a. The certificate holder may adjust the amount of the bond or letter of credit based on the design configuration of the facility, or any phase of the facility, by applying the unit

[54] In Section III.B Organizational Expertise, the Department recommends Council amend Organizational Expertise Condition 5 to provide the Department the directive to review site certificate compliance and any repeated issues against the adequacy of contingencies applied to the retirement estimate, to address the additional liability shield represented in RFA1.

costs presented in Table ~~3~~ 5 of the Final Order on RFA1 ~~the ASC~~, and the contingencies illustrated in Table ~~3~~ 5 of the Final Order on RFA1 ~~the ASC~~, and may further make adjustments based on unit costs for task and actions presented in ~~ASC Exhibit W~~ Attachment G to the Final Order on RFA1 ~~W-1 and W-2~~. Any revision to the restoration costs should be adjusted to the effective date as described in (b). Any modification to the unit costs presented in Table ~~3~~ 5 of the Final Order on RFA1 ~~the ASC~~ are subject to review and approval by the Council.

b. The certificate holder shall adjust the amount of the bond or letter of credit using the following calculation:
   i. Adjust the amount of the bond or letter of credit (expressed in Q4 2024~~19~~ dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency and using the fourth quarter 2024~~19~~ index value and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the index is no longer published, the Council shall select a comparable calculation to adjust fourth quarter 2024~~19~~dollars to present value.
   ii. Round the result total to the nearest $1,000 to determine the financial assurance amount.

c. The certificate holder shall use an issuer of the bond or letter of credit and a bond or letter of credit form approved by the Council, based on the Council's pre-approved financial institution list and form.

d. The Department and Council reserve the right to adjust the contingencies, as appropriate and necessary to ensure that costs to restore the site are adequate to maintain health and safety of the public and environment.

[Mandatory Condition OAR 345-025-0006(8); PRE-RF-01; Final Order on ASC; AMD1]

Ability of the Certificate Holder to Obtain a Bond or Letter of Credit

RFA1 Attachment 5 includes a June 21, 2024 financial assurance letter from Arch Insurance Company indicating that Arch would provide Ecoplexus, Inc., the certificate holder's parent company, with a surety credit of up to $20 million for the Madras facility. Arch Insurance Company is included on the Council's 2024 list of pre-approved financial institutions for financial assurance instruments.[55] The letter continues that Ecoplexus maintains sufficient bonding capacity for the bond requirements and that, based on the financial institution's knowledge of the management team, experience, and financial conditions, they are confident in Ecoplexus' ability to successfully complete the project. While the letter does not provide a binding commitment from the financial institution, the Department recommends Council find that it sufficiently demonstrates the certificate holder's ability, via its parent company, to obtain a bond or letter of credit in the amount necessary to retire the facility site.

[55] 2024 EFSC Approved Financial Institution List 2024-02-23.

III.G.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and recommended amended site certificate conditions described above, the Department recommends Council find that the site can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility, and that the certificate holder has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to restore the site to a useful, non-hazardous condition.

III.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060

> *To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:*
>
> *(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, and*
>
> *(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.*[56]

III.H.1. Findings of Fact

The Fish and Wildlife Habitat standard requires the Council to find that the design, construction and operation of the facility, with proposed RFA1 changes, is consistent with the Oregon Department of Fish and Wildlife's (ODFW) habitat mitigation goals and standards, as set forth in OAR 635-415-0025. This rule creates requirements for mitigating impacts to fish and wildlife habitat, based on the functional quantity and quality of the habitat impacted as well as the nature, extent, and duration of the impact. The rule also establishes a habitat classification system based on the function and value of the habitat it would provide to a species or group of species likely to use it. There are six habitat categories, with Category 1 being the most valuable, and Category 6 the least valuable.

As defined in the project order, the analysis area for fish and wildlife habitat includes the area within and extending ½-mile from the site boundary.

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility, with proposed RFA1 changes, would continue to satisfy requirements of the standard. There have been no changes

[56] OAR 345-022-0060, effective Mar. 8, 2017.

in the Council's standard or in ODFW's Habitat Mitigation Policy since Council's approval of the Final Order on the ASC. To determine whether there have been changes in fact that could impact the prior evaluation, various sources were evaluated, as referenced in RFA and described in this section.

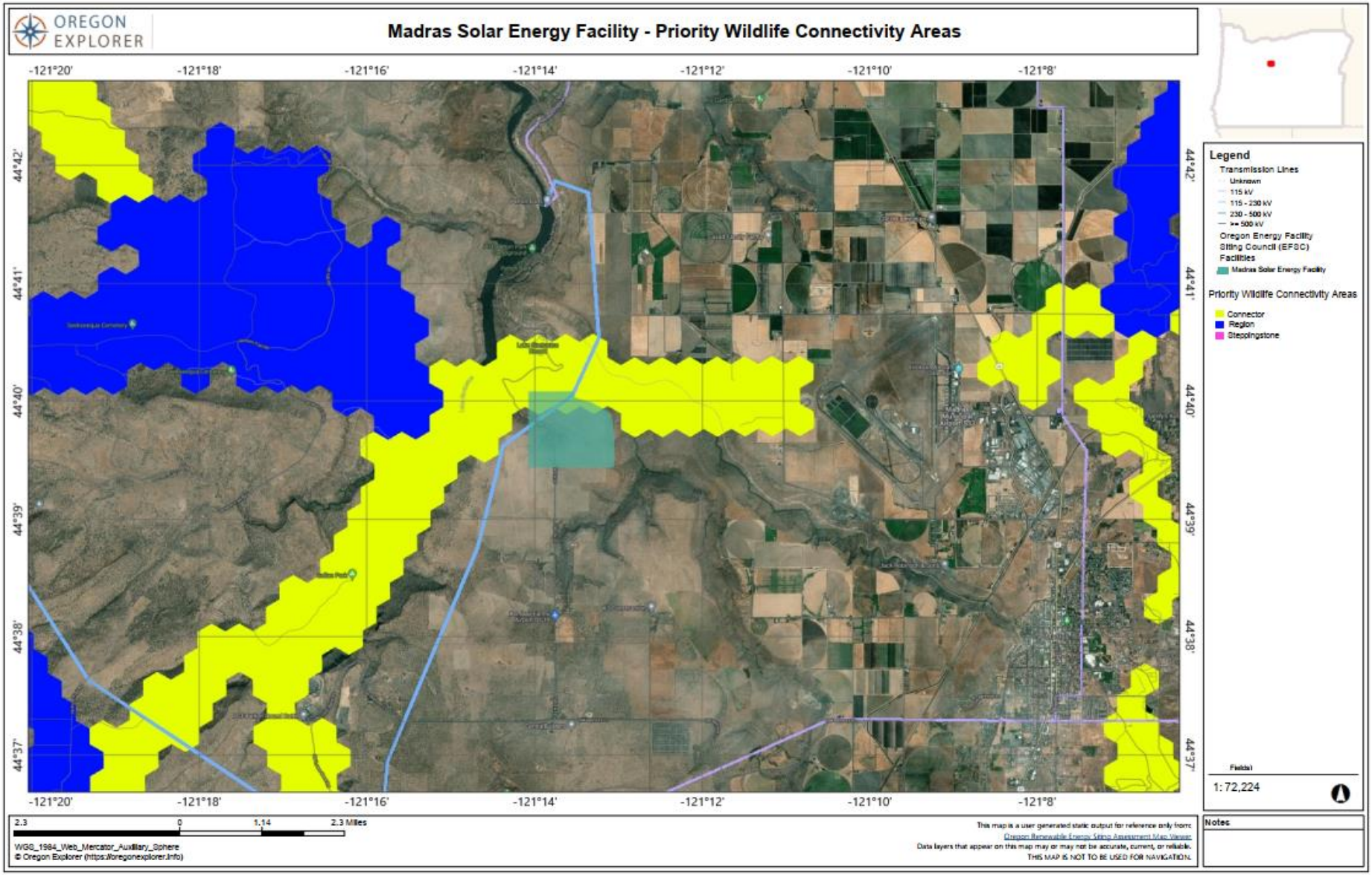
The certificate holder conducted a 2023-24 literature review of aerial imagery; Oregon Biodiversity Information Center (ORBIC); United States Fish and Wildlife Service's Information for Planning and Consultation (IPaC) resource report; the National Audubon Society's Important Bird Areas; and the U.S. Geological Survey's Breeding Bird Survey. In addition, priority wildlife corridor areas (PWCA), based on ODFW's 2022 Oregon Connectivity Assessment and Mapping Project, were evaluated to determine potential effects to the prior habitat categorization of the site and analysis area. The results of the literature review, which were provided in RAI2, did not identify any new federally listed or state listed Special-status species that could affect the prior habitat categorization of species' impact assessment.

Based on review of ODFW's PWCA Web Map, the northeastern side of the site boundary overlaps with a portion of a mapped PWCA, as presented in Figure 3 (below). The proximity and overlap of the site boundary to the PCWA does not impact the prior habitat categorization because the site predominately avoids the PWCA and because the overlap is near the PWCA termination point, lessoning the impact to an area that would otherwise provide important habitat connectivity. [57]

Based on the results of literature review and Department's consultation with ODFW, there are no new state-listed sensitive species recorded, land cover/use changes or new available data that would impact the previous designation of Category 4 (Exotic Annual Grassland, Rabbitbrush Shrub-Steppe), and Category 6 (Developed) habitat at the site.

[57] MSEFAMD1 Reviewing Agency Comments ODFW 2024-10-04

Figure 3: Priority Wildlife Corridor Areas within and in proximity to the approximate Facility site



Habitat impacts from facility construction and operation include approximately 273 acres of permanent impact and 6.7 acres of temporary impact. Due to ongoing challenges of habitat restoration (i.e., limited restoration success) when implemented by EFSC certificate holders, the Department recommends Council consider the previously designated 6.7 acres of temporary habitat impacts as permanent impacts, and account for and mitigate for these acres in the Habitat Mitigation Plan (HMP) under Fish and Wildlife Habitat Conditions 3 (GEN-FW-03).

Temporary disturbance impacts would still be required to be restored in accordance with General Standard Condition 6 (OPR-GS-01) and Soil Protection Condition 1 (GEN-SP-01), just not to a habitat restoration standard.

Council previously imposed Fish and Wildlife Habitat Condition 1 (GEN-FW-01) requiring that the certificate holder finalize and implement a Revegetation Plan. Because temporary habitat impacts are recommended to be considered permanent impacts, the Revegetation Plan is no longer needed. Therefore, the Department recommends Council remove this condition from the site certificate, as presented below.

Recommended Deleted Fish and Wildlife Condition 1: ~~The certificate holder shall:~~

~~a. Before beginning construction, finalize and submit a Revegetation Plan, based upon the draft plan provided in Attachment F of the Final Order on the ASC, for review and approval by the Department, in consultation with ODFW. The scope of finalizing the plan shall, at a minimum, include the following:~~

~~1. Final assessment of temporary habitat impacts (in acres), based on habitat quality of habitat subtype, and final facility design, presented in tabular format.~~

~~2. Survey and sampling protocol for evaluating the success criteria of all previously-disturbed wildlife habitat areas based on pre-disturbance habitat quality and diversity of habitat temporarily impacted.~~

~~3. Description of topsoil salvage, scarification and restoration methods if intended to be implemented.~~

~~4. Approval of appropriate seed mix composition from the ODFW.~~

~~b. During construction and operation of the facility or facility component, implement the requirements of the plan; monitor and report results of revegetation activities to the Department, as required by the plan.~~ [~~GEN-FW-01;~~ Deleted in Final Order on RFA1]

The certificate holder identified a potential Habitat Mitigation Area (HMA), as presented in the draft Habitat Mitigation Plan (HMP – included as Attachment D to this order), on a 280-acre parcel. Therefore, the HMA is large enough to achieve the ODFW habitat mitigation goals and standards applicable to the site.

The draft HMP includes enhancement actions and success criteria to be implemented at the HMA to protect and improve habitat, and to determine whether the mitigation goals and standards were met. Preconstruction requirements include an HMA habitat assessment, grazing assessment, enhancement action review, provision of success criteria, and legal instrument. This draft plan was previously approved by Council. The Department recommends Council find that

there have been no changes that would impact or change the previous approval. The Department recommends Council continue to find that the draft HMP mitigation is adequate to satisfy the Council's Fish and Wildlife Habitat standard

III.H.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions, the Department recommends the Council find that the design, construction and operation of the facility, with the proposed RFA1 changes, are consistent with the mitigation goals and requirements of the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy under OAR 635-415-0025.

III.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070

> *To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:*
>
> *(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:*
>
> *(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or*
>
> *(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and*
>
> *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.*[58]

III.I.1. Findings of Fact

The Threatened and Endangered (T&E) Species standard requires the Council to find that the design, construction, and operation of the facility, with the requested extension of the construction deadlines, are not likely to cause a significant reduction in the likelihood of survival or recovery of a fish, wildlife, or plant species listed as threatened or endangered by Oregon Department of Fish and Wildlife (ODFW) or Oregon Department of Agriculture. For

[58] OAR 345-022-0070, effective May 15, 2007.

threatened and endangered plant species, the Council must also find that the facility, with the requested extension of the construction deadlines, is consistent with an adopted protection and conservation program from Oregon Department of Agriculture. Threatened and endangered species are those listed under ORS 564.105(2) for plant species and ORS 496.172(2) for fish and wildlife species. For the purposes of this standard, threatened and endangered species are those identified as such by either the Oregon Department of Agriculture or the Oregon Fish and Wildlife Commission.[59]

As defined in the project order, the analysis area for threatened and endangered plant and wildlife species includes the area within and extending five miles from the site boundary.

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard. Since Council's approval of the *Final Order on ASC*. Changes in fact are evaluated in this section.

To determine whether there have been any changes in fact since the Council's approval of the *Final Order on ASC*, the certificate holder requested an updated records search from Oregon Biodiversity Information Center (ORBIC) and the USFWS's 2024 Information for Planning and Consultation (IPaC) resource report. Neither of these sources identified any state-listed T&E species likely to occur within the analysis area. ODAg's T&E plant list was updated in May 2024, however, the update did not result in any changes for Jefferson County, where there are no state listed T&E plants likely to occur.

With no state listed threatened or endangered species that are likely to occur in the analysis area, and no changes in fact or law that would influence the Council's previous findings and conclusions, the Department recommends that Council continue to find that the facility, with proposed RFA1 changes, will not result in impacts to the likelihood or survival of any T&E species.

III.I.2. Conclusions of Law

Based on the foregoing analysis, the Department recommends the Council find that the design, construction and operation of the facility, with the proposed RFA1 changes, are not likely to cause a significant reduction in the likelihood of survival or recovery of species listed as threatened or endangered by the Oregon Department of Agriculture or Oregon Fish and Wildlife Commission.

[59] Although the Council's standard does not address federally-listed threatened or endangered species, certificate holders must comply with all applicable federal laws, including laws protecting those species, independent of the site certificate.

III.J. SCENIC RESOURCES: OAR 345-022-0080

(1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on significant or important scenic resources.

(3) A scenic resource is considered to be significant or important if it is identified as significant or important in a current land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency.

(4) The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.[60]

III.J.1. Findings of Fact

Under OAR 345-027-0360(3), the analysis area for a request for amendment is the larger of either the study area, as defined in OAR 345-001-0010, or the analysis area described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference. The study area for impacts protected areas under OAR 345-001-0010(35)(b) is the area within and extending 10 miles from the site boundary. The analysis area for impacts to Scenic Resources established in the project order is the area within and extending 5 miles from the site boundary.[61] Because the study area under OAR 345-001-0010 is larger, and because the certificate holder has not requested a smaller study area, the analysis area for RFA1 is the area within and extending 10 miles from the site boundary.

[60] OAR 345-022-0080, effective December 19, 2022.

[61] MSEFNOIDoc11 Project Order SIGNED 2019-09-12, Table 2.

III.J.1.a. Scenic Resources in the Analysis Area and Visual Impact Summary

The Scenic Resources standard requires the Council to find that visibility of facility structures, plumes, vegetation loss and landscape alterations would not cause a significant adverse impact to identified scenic resources and values. To be considered under the standard, scenic resources and values must be identified as "significant or important" in local land use plans, tribal land management plans, state, regional, and/or federal land management plans.

In preparation of RFA1 and in the review of RFA1, the certificate holder and Department reviewed land use plans previously reviewed and determined that none of the applicable plans have been updated since the site certificate was approved; there are not any new Scenic Resources in the analysis area.[62] There have not been any changes in fact or law that would influence the Council's previous findings and conclusions under OAR 345-022-0090 provided in the *Final Order on ASC*. Those prior findings are incorporated herein by reference and direct incorporation, as applicable, and briefly summarized below.[63]

Table 6 below lists the scenic resources Council previously determined were considered significant or important as designated in a management plan and therefore protected under the standard. Table 6 lists the resource, the designating management plan, and provides a summary of the visual impact assessment Council relied upon in the *Final Order on ASC*.

[62] MSEFAMD1 RFA1, Section 6.10. RFA1, Table 4 lists the names of the Land Use Plans reviewed for RFA1 and in the Final Order on ASC.

[63] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 139-155.

Table 66: Council-Protected Scenic Resources Identified in Applicable Land Use and Management Plans and Summary of Visual Impact Assessment

Scenic Resource	Managing Jurisdiction	Plan Where Scenic Resource is Identified	Nearest Approximate Distance (Miles) and Direction from Facility Site Boundary	Is Facility Potentially Visible?	Conclusions from Final Order on ASC
Canyon walls of Deschutes and Crooked Rivers	Jefferson County	*Jefferson County Comprehensive Plan* (Jefferson County, 2006)	0.4 – North, West, South	Yes – unlikely, and only from isolated areas upland of the rim forming the canyon walls. No visibility along roadways or at water level within the canyons.	No significant potential adverse impacts to the scenic resource – no visibility or impact along roadways or at water level. Potential views from isolated upland areas are likely blended or muted with surrounding elements and nearly undetectable in the background of views toward the facility. Views of the facility site were precluded from view by existing elevation and topography at accessible locations where photo surveys were conducted.
Madras Mountain Views Scenic Bikeway	OPRD/ Jefferson County	*Madras Mountain Views Scenic Bikeway Management Plan* (OPRD, 2013)	2.5 – South	Yes – minimally and only from intermittent points along a 1.7-mile section of SW Belmont Lane. An approximately 80-foot segment of SW Belmont Lane at the intersection, the facility may be visible and will appear similar as a dark geometric outline or shadow	No significant potential adverse impacts to the scenic resource – appearance screened from the road by existing juniper forest in the foreground and weak visual contrast where the Facility may be visible in the middleground of views toward the Facility. Any visible facility components would lack definition and detail and will not dominate the existing landscape.

Table 6~~6~~: Council-Protected Scenic Resources Identified in Applicable Land Use and Management Plans and Summary of Visual Impact Assessment

Scenic Resource	Managing Jurisdiction	Plan Where Scenic Resource is Identified	Nearest Approximate Distance (Miles) and Direction from Facility Site Boundary	Is Facility Potentially Visible?	Conclusions from Final Order on ASC
				with a low profile on the landscape.	Views of the facility along the 30-mile route of the Madras Mountain Views Scenic Bikeway will be precluded by existing topography, elevation, and vegetation.
The Cove Palisades State Park	OPRD	*Jefferson County Comprehensive Plan* (Jefferson County, 2006) *The Cove Palisades State Park Master Plan* (OPRD, 2002) *Crooked River National Forest Land and Resource Management Plan* (USFS, 1989b)	3.1 – South	Yes – only from an isolated 64-acre area located approximately 3.1 miles south of the facility that is not designated as a significant or important viewpoint. Facility would not be visible from areas within the park boundary surrounding Lake Billy Chinook.	No significant potential adverse impacts to the scenic resource – facility location would not be visible from views identified as significant or important in the Cove Palisades State Park Master Plan Potential. Visibility only occurs in the middleground of views from a portion of the park that is not identified for scenic resource management.

Table ~~6~~6: Council-Protected Scenic Resources Identified in Applicable Land Use and Management Plans and Summary of Visual Impact Assessment

Scenic Resource	Managing Jurisdiction	Plan Where Scenic Resource is Identified	Nearest Approximate Distance (Miles) and Direction from Facility Site Boundary	Is Facility Potentially Visible?	Conclusions from Final Order on ASC
Lower Deschutes River – from Pelton Dam downstream to the north County line Deschutes River Scenic Waterway Recreation Area Lower Deschutes Wild and Scenic River	Jefferson County/ BLM	*Jefferson County Comprehensive Plan* (Jefferson County, 2006) *Lower Deschutes River Management Plan Record of Decision* (BLM, 1993)	4.2 – North	Yes – unlikely, and only at approximately 5 miles from the Facility along a 0.2-mile-long section of Bureau of Indian Affairs (BIA) Road 24, and along an approximately 400-foot-section of the river at river level.	No significant potential adverse impacts to the scenic resource – appearance likely blended or muted with surrounding elements and nearly undetectable in the background of views toward the horizon along the plateau of the facility site. Facility would appear obscured or may be undetectable in the surrounding landscape. Views of the facility from the majority of the Lower Deschutes Wild and Scenic River management area are precluded by the existing elevation and topography of the river canyon, and because distance, topography, and vegetation, are likely to preclude or obscure views from locations within the management area

Table 66: Council-Protected Scenic Resources Identified in Applicable Land Use and Management Plans and Summary of Visual Impact Assessment

Scenic Resource	Managing Jurisdiction	Plan Where Scenic Resource is Identified	Nearest Approximate Distance (Miles) and Direction from Facility Site Boundary	Is Facility Potentially Visible?	Conclusions from Final Order on ASC
Lake Billy Chinook View Area	USFS	*Record of Decision for the Land and Resource Management Plan for the Ochoco National Forest and Crooked River National Grassland* (USFS, 1989a) *Crooked River National Forest Land and Resource Management Plan* (USFS, 1989b)	5.8 – Southwest	No. Based on the ZVI analysis, and on the geographic relationship between the facility and Lake Billy Chinook, the facility would not be visible from the Lake Billy Chinook View Area.	No impact.

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The Council did not impose any conditions specifically to ensure compliance with the Scenic Resources Standard. Because there are no changes to the facility design proposed in RFA1 or other changes that would increase or alter the visual impacts of the facility, the Department recommends Council find that there would not be significant adverse impacts from the facility to Scenic Resources within the analysis area.

III.J.2. Conclusions of Law

Based on the foregoing analysis, the Department recommends the Council find that the that the facility, with the proposed deadline extension, is not likely to result in significant adverse visual impacts to significant or important scenic resources.

III.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.[64]

III.K.1. Findings of Fact

[64] OAR 345-022-0090, effective May 15, 2007, amended by minor correction filed on July 31, 2019.

The project order describes that the analysis area for the Historic, Cultural and Archaeological Resources standard is the area within and extending one mile from the site boundary. The Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Klamath Tribes and the Burns Paiute Tribe are potentially affected by the facility pursuant to OAR 345-001-0010(28)(o).

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been "changes in fact or law" since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard.

To identify any potential new resources within the analysis area, the certificate holder reviewed the General Land Office (GLO) records, Historic Map Works, the results of their 2019 Phase I Cultural Resource Survey, and the Oregon State Historic Preservation Office (SHPO) 2016 Guidelines for Conducting Field Archaeology in Oregon. Based on this review, no additional resources were identified. Described below, evaluation provided in RFA1 found that there have not been any changes in fact or law that would influence the Council's previous findings and conclusions under OAR 345-022-0090, as provided in the *Final Order on ASC*. Those prior findings are incorporated herein by reference and direct incorporation, as applicable, briefly summarized, and supplemented below.[65]

Survey Methods and Results

The certificate holder previously evaluated the Oregon State Historic Preservation Office online geographic information system database to identify previously recorded cultural resources within the analysis area and its vicinity which indicated that there were 14 previous cultural resource investigations conducted within one mile of the site boundary. The desktop review identified two cultural resources within one mile of the site boundary and did not identify any previously recorded National Register of Historic Places (NRHP)-eligible properties, archeological sites, or objects within the proposed site boundary.

Also during the review of the ASC, pedestrian surveys of the facility site boundary were conducted by a team of archeologists from Jacobs, and accompanied by a Geo Visions, Inc. archeological technician.[66] Importantly, prior to the field surveys, the area experienced a fire, so surface visibility of the site was excellent.[67] According to the Phase I Cultural Resources Survey,

[65] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 155-158; MSEFAPP ASCDoc1-19_Exhibit_S_Cultural_Resources 2020-11-09.
[66] Geo Visions, Inc. a private sector enterprise wholly owned and operated by the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO). https://www.wsgeovisions.com/
[67] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, page 156.

submitted and reviewed and concurred by SHPO, no archaeological sites, objects, or resources potentially eligible for listing on the NRHP were identified during the pedestrian survey.[68]

Comment letters from the CTWSRO indicated they had reviewed the technical reports and provided a template for an Inadvertent Discovery Plan, which was adopted by the certificate holder and Council in the below referenced conditions.[69]

Potential Impacts to Resources

Although Council previously found that no historic or archaeological resources were identified during the pedestrian survey, it would be possible for previously unidentified resources to be impacted during facility construction activities. As such, and as requested by CTWSRO, Council adopted Historic, Cultural and Archeological Condition 1 (GEN-HC-01), which requires that an Inadvertent Discovery Plan be implemented during construction and operation of the facility. This condition continues to apply to the facility, with changes proposed in RFA1.

As noted above, only two historic resources have been documented within 1 mile of the facility area. 35JE00891 is a historic site ditch and refuse scatter which the certificate holder designated as potentially eligible (unevaluated) for the NRHP in the Phase I Cultural Resources Survey. It is located 0.7 miles north of facility area, north of Willow Creek. Willow Creek and the Willow Creek Canyon Trail are approximately 0.3 miles north of the facility site boundary and follow a canyon east, southeast of the facility and Lake Simtustus. 35JE00892 is ~~an~~a historic site railroad grade and associated refuse scatter which the certificate holder recommended as eligible. It is located 0.8 mile north of facility area, also north of Willow Creek. The existing viewshed in this area includes vegetation, juniper trees, and an existing road and high voltage transmission line.

Council previously found that from a point on Willow Creek Road 0.7 miles north of the facility (which also serves as Willow Creek Canyon Trail) east of the intersection with NW Pelton Dam Road, visual impacts would appear as a dark black line, combined with vegetation screening and existing industrial infrastructure and development within the viewshed, visual impacts would be less than significant.[70] Because resources 35JE00891 and 35JE00892 are in same vicinity, elevation, and distance from the facility as this point on Willow Creek Road, the Department recommends visual impacts would be similar and that these two potentially eligible resources would also be less than significant.

[68] SHPO stated that they had reviewed the report and concur that a good faith effort was implemented, and that the facility would likely have no effect on any significant archeological objects or sites. Furthermore, SHPO states that based on the information provided, additional archeological research is not anticipated for the facility. MSEFAPPDoc7 pASC Reviewing Agency Comments (SHPO - SHPO Case No__ 19-1001) LETTER 2020-02-25.

[69] MSEFAPPDoc6 pASC Reviewing Agency Comments (CTWS) 2020-01-29.

[70] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, page 156.

III.K.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing certificate condition described above, the Department recommends the Council find that the construction and operation of the facility, with the proposed RFA1 changes, are not likely to result in significant adverse impacts to historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places or other archaeological objects or sites identified under OAR 345-022-0090.

III.L. RECREATION: OAR 345-022-0100

(1) To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities.

(2) The Council must consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;

(b) The degree of demand;

(c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse impacts from the design, construction, and operation of the facility on important recreational opportunities.

(4) The Council must apply the version of this rule adopted under Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of

energy facilities in effect on the date the site certificate or amended site certificate is executed.[71]

III.L.1. Findings of Fact

Under OAR 345-027-0360(3), the analysis area for a request for amendment is the larger of either the study area, as defined in OAR 345-001-0010, or the analysis area described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference. The study area for impacts to recreational opportunities under OAR 345-001-0010(35)(d) is the area within and extending 5 miles from the site boundary. The analysis area for impacts to Scenic Resources established in the Project Order is the area within and extending 5 miles from the site boundary.[72] Because the study area under OAR 345-001-0010 and the analysis area established in the project order are equivalent, the analysis area for RFA1 is the area within and extending 5 miles from the site boundary.

Recreational Opportunities within the Analysis Area and Impact Assessment Summary

In the *Final Order on ASC*, the Council evaluated 21 recreational opportunities identified by the certificate to determine if the recreational opportunities would be considered important under OAR 345-022-0100(2). The Council found that 7 of the recreational opportunities that were identified in the analysis area were considered important, while 14 identified recreational opportunities did not meet the criteria of importance under OAR 345-022-0100(2).[73] The Council's findings are summarized in Table 7 below.

Neither the Certificate Holder nor Department identified any new or previously unevaluated recreational opportunities in the 5-mile analysis area for RFA 1, and no significant changes to any of the opportunities since the site certificate was granted were identified.[74] There have not been any changes in fact or law that would influence the Council's previous findings and conclusions under OAR 345-022-0090 provided in the *Final Order on ASC*. Those prior findings are incorporated herein by reference and direct incorporation, as applicable, and briefly summarized below.[75]

[71] OAR 345-022-0100, effective December 19, 2022.

[72] MSEFNOIDoc11 Project Order SIGNED 2019-09-12, Table 2.

[73] The importance of recreational opportunities is assessed based on five factors outlined in the standard: special designation or management, degree of demand, outstanding or unusual qualities, availability or rareness, and irreplaceability or irretrievability of the recreational opportunity. MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, Table 8.

[74] MSEFAMD1 RFA1 2024-10-17, Section 6.13.

[75] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 158-176.

Table 7: Summary of Recreational Opportunity Impact Assessment

Important Recreational Opportunity	Management or Jurisdiction	Distance from Site Boundary (miles)	Importance Assessment and Conclusions	Noise	Traffic	Visual Impacts
Areas identified as Important						
Crooked River National Grassland	Local/State/Federal	0*	Areas within the grassland closest to the site boundary are managed for foraging habitat, where the nearest opportunities for public access and recreation extend 3.5 miles from the site boundary. Only National Grassland in Oregon, the opportunities at this resource are unique, rare and irreplaceable.	Maximum predicted construction noise level at 50 feet is 90 dBA. Construction noise is temporary. Areas impacted by construction noise are not accessible to the public, where publicly accessible areas are at a distance of 3 miles or greater and would not be expected to experience audible noise impacts. Temporary, short-term noise levels from facility construction would not be expected to significantly impact grazing use or recreational hunting	-	Facility may be visible up to a distance of 3.5 miles from the proposed site boundary within the grassland. Not significant because the areas impacted are not publicly accessible and not specifically managed for scenic qualities, yet for wildlife management and preservation.
Willow Creek Canyon Trail	State/Federal	0.3	Grassland is one of five designated regional trails, with a large greenway connected directly to a population center, managed by BLM and USFS. The opportunities at this resource are unique, rare and irreplaceable.	Maximum predicted construction noise levels between 400 and 2,640 feet range from 72 to 56 dBA. Construction noise is temporary. Terrain between the proposed site boundary and the trail includes existing juniper, a moderate level of vegetation and elevation increase from canyon walls. Terrain, topography and existing road noise sources mask construction noise.	-	Facility may be visible from the foreground and middle ground for an approximately 1.9 mile segment of the trail as it approaches NW Pelton Dam Road, but otherwise it would not be visible from the trail. From photo point at Willow Creek Road facility may appear as a thin dark line along the ridgeline. Existing viewshed includes vegetation, juniper trees, an existing road and high voltage transmission line. Visual impacts would appear as a dark black line, combined with vegetation screening and existing industrial infrastructure and development within the viewshed, making impacts less than significant.
Madras Mountain Views Scenic Bikeway	State	2.5	One of 17 designated scenic bikeways in Oregon. Demand for opportunities at the scenic bikeway is moderate based on designation and capacity. It is specially designated as a scenic bikeway with opportunities for viewing unique natural and historic features, the	At one mile, predicted construction noise levels range from 44 to 50 dBA. Based on a noise attenuation rate of 6 dBA per doubling of distance, noise levels at a distance of 2.5 miles would not be expected to be audible. Construction noise is temporary.	Construction-related traffic may result in minor delays in access and impacts to bikers from sharing the road. Local roads have sufficient capacity to support the load and use by facility	Facility could be visible to cyclists from intermittent locations along a 1.7-mile section of SW Belmont Lane, however, views towards the facility would be screened by up to 2 miles of existing juniper forest in foreground views from most vantage points. An approximately 80-foot segment of SW Belmont Lane at the SW Elk Drive intersection, the facility may be visible and will appear similar as a dark

Table 7: Summary of Recreational Opportunity Impact Assessment

Important Recreational Opportunity	Management or Jurisdiction	Distance from Site Boundary (miles)	Importance Assessment and Conclusions	Noise	Traffic	Visual Impacts
			opportunities at this resource are unique, rare and irreplaceable.		construction vehicles and bikers.	geometric outline or shadow with a low profile on the landscape. Facility components will lack definition and detail and will not dominate the existing landscape. Views of the facility along the 30-mile route of the Madras Mountain Views Scenic Bikeway would be precluded by existing topography, elevation, and vegetation, and therefore less than significant.
The Cove Palisades State Park	State	3.1	5,200 acre state park managed by OPRD; one of five parks in the region. Demand for opportunities at the park is high and based on the high degree of demand with opportunities for nearly year-round camping, day-use and lake access, the opportunities at this resource are unique, rare and irreplaceable.	Due to distance from the site and noise attenuation, no impacts from facility construction noise are anticipated.	Construction-related traffic may result in minor delays in access and impacts to bikers from sharing the road. Local roads have sufficient capacity to support the load and use by facility construction vehicles and bikers.	Facility would not be visible from areas within the park boundary surrounding Lake Billy Chinook. Facility is only potentially visible from an isolated 64-acre area of the park located approximately 3.1 miles south. Important viewpoints in park are not located within the 5-mile analysis area forrecreational opportunities. The nature of topography of the existing landscape, and the facility'slimited visibility from the park makes any visual impact less than significant.
Round Butte Overlook Park	Portland General Electric	4.0	Popular for bird watching, and site of an annual Eagle Watch festival. Demand for opportunities at the park is moderate given the annual festival and picnicking capacity. Based on the unique overlook viewing opportunities, the opportunities at this resource are outstanding.	Due to distance from the site and noise attenuation, no impacts from facility construction noise are anticipated.	Construction-related traffic may result in minor delays in access and impacts to bikers from sharing the road. Local roads have sufficient capacity to support the load and use by facility construction vehicles and bikers.	Based on ZVI and photographic evidence, facility would not be visible at the park.
Lower Deschutes Wild and Scenic River	Federal	4.2	Recreational opportunities at this resource include fishing, camping, hiking, wildlife viewing, biking and hunting. Unique features include scenic views of rimrock canyons, rapids and diverse plant communities. Demand for opportunities at the river is moderate and based on the	Due to distance from the site and noise attenuation, no impacts from facility construction noise are anticipated.	-	Majority of views from the Lower Deschutes Wild and Scenic River toward the facility would be precluded by the existing elevation and topography of the river canyon. Facility could be visible to motorists and boaters from a small area within the Lower Deschutes Wild and Scenic River boundary, approx. 5 miles from the facility site boundary along an approximately 0.2-mile-long section of BIA

Table 7: Summary of Recreational Opportunity Impact Assessment

Important Recreational Opportunity	Management or Jurisdiction	Distance from Site Boundary (miles)	Importance Assessment and Conclusions	Noise	Traffic	Visual Impacts
			moderate degree of demand with scenic views and high-quality fishing, the opportunities at this resource are outstanding and irreplaceable.			Road 24, and along an approximately 400-foot-section of the river at river level. Facility location is on the plateau that forms the horizon in the background of the viewshed but would appear obscured or may be undetectable in the surrounding landscape. Views of the facility from the majority of the management area are precluded by the existing elevation and topography of the river canyon, and because distance, topography, and vegetation, are likely to preclude or obscure views from locations within the management are less than significant.
Jefferson County Fairgrounds	Jefferson County	4.6	50 acres of land, 15 buildings and indoor facilities, and a youth fishing pond. Opportunities for fishing, picnicking, use as an RV park, attendance at the Jefferson County Fair and Rodeo. Only fairground in the county, with high demand. Recreational opportunities contain outstanding or unusual qualities and therefore are rare, with high demand.	Due to distance from the site and noise attenuation, no impacts from facility construction noise are anticipated.	-	Based on ZVI and photographic evidence the facility would not be visible at the fairgrounds

Source: Compiled from Final Order on ASC Table 8 and findings and conclusions from Final Order.
* An approximately 0.5 mile segment of the northwest corner of the grassland abuts (i.e. is within 0 feet of) the facility site boundary, however, the protected area is not crossed by the site boundary.

Potential Impacts to Important Recreation Opportunities

In the Final Order, the Council found that the construction and operation of the facility would not result in any direct loss of recreational opportunities because it would not require any physical disturbance or closure of any of the identified important recreational opportunities.[76] As described in more detail below, the Council also found that the construction and operation of the facility would not result in any significant adverse visual impacts, or significant impacts from traffic or noise.[77]

III.L.2. Conclusions of Law

Based on the foregoing analysis, the Department recommends the Council continue to find that the design, construction and operation of a facility, with the proposed RFA1 changes, are not likely to result in a significant adverse impact to important recreational opportunities.

III.M. PUBLIC SERVICES: OAR 345-022-0110

> *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.*
>
> *(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*
>
> *(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*[78]

III.M.1. Findings of Fact

The Council's Public Services standard requires the Council to find that the facility is not likely to result in significant adverse impacts on the ability of public and private service providers to

[76] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 168-169.
[77] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pg. 158.
[78] OAR 345-022-0110, effective April 3, 2002.

supply sewer and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care, and schools. The analysis area for potential impacts to public services from construction and operation of the facility is the area within and extending 10-miles from the site boundary. Based on the analysis area, the following evaluation assesses potential impacts to public and private providers within the cities of Madras, Culver and Metolius.

Prior findings of fact from the *Final Order on ASC* that are applicable RFA1 are incorporated herein by reference and direct incorporation, as applicable, and briefly summarized below.[79]

Certificate holder confirms that the assumptions relied upon in the ASC to evaluate potential impacts from facility construction and operation to private and public service providers have not changed. Some of those assumptions include that construction of the facility would use a maximum construction workforce of 200; average construction workforce of 100, where 10 to 15 percent of workforce hired locally (10 to 15 workers). Haul routes would include US 26; US 26 to US 97; US 97 to SW Belmont Lane to SW Elk Drive. Workers would travel approximately 400 roundtrips per day (or around 200 roundtrips per day, if carpooling is used consistently).

Sewer and Sewage Treatment

The facility would not rely on or require use of existing public or private sewer system or sewage treatment, other than portable toilets, which would be managed via licensed third-party contractor for material handling and disposal. Because public or private providers of sewer and sewage disposal facilities would not be directly utilized by the facility, the Department recommends Council continue to find that the facility would not result in impacts to providers of sewer and sewage treatment providers.

Stormwater Drainage

The facility does not require use of or interconnection to a publicly or privately managed stormwater system. Facility components such as roads, substation, and solar array cells would be designed and constructed to maintain existing stormwater drainage patterns and it would avoid siting structures and components situated on steep slopes that surround the site; therefore, the Department recommends Council continue to find that the facility would not impact stormwater service providers.

Water Use

As discussed in the *Final Order on ASC* and provided in Table 8 below, the following quantities of water are estimated for construction and operation of the facility.

[79] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 176-189.

Table 8: Estimated Maximum Water Use from Construction and Operation

Water Use Description	Quantity/Units
Construction	Gallons
Civil and Site Preparation (road compaction and dust control)	10,530,000
Concrete (pads, foundations, and ballasts)	2,225,000
Potable and Sanitation Water	50,000
Estimated Construction Water Use =	12,800,000
Operation	Gallons/Year
Solar Panel Washing	1,650,000
Annual Estimated Operational Water Use =	1,650,000
Source: MSEFAPP ASCDoc1-15 Exhibit O Water Resources 2020-11-09, Section O-1.	

Service Providers in Analysis Area

Water for construction would be supplied by the Deschutes Valley Water District (Water District) from its water supply system under the District's municipal or quasi-municipal water permit or water right permit numbers S26113 and S36515.[80] ASC Exhibit O provides a November 20, 2019 letter from the Water District affirming that the district is both willing and able to meet the facility's water needs during construction, provided that the amounts are consumed at flows of 33 gallons per minute or less. An additional 2020 letter is also provided which explains that the Water District has water rights totaling 28.446 cubic feet per second (cfs) or 18.38 million gallons per day (MGD) and pumping capacity of 23.5 cfs or 15.2 MGD under two water permits for municipal or quasi-municipal water use.[81]

RFA1 states that the certificate holder will continue to obtain water from the District, which will be trucked on-site by a third-party, however, the certificate holder does not provide a current letter or other form of evidence from the District confirming its ability to provide water for construction. The Department recommends Council impose the following condition to ensure, given the uncertainty in water source to supply water and the unknown provider's legal ability to meet the construction water usage needs, the Department recommends Council impose the following condition:

> **Recommended Public Services Condition 5 [PRE]**: Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall:
> a. Identify all water-related needs and estimate daily and annual water demand for each construction phase, as applicable.
> b. Provide to the Department, evidence such as a contract or purchase agreement demonstrating that adequate water supply to meet construction demand has been

[80] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, Section IV.Q. *Water Rights*.

[81] MSEFAPP ASC Clarification Request (Water Rights) 2021-01-07.

secured and that water for all construction activities will be legally obtained by service providers or third-party permits.
[PRE-PS-02, Final Order on AMD1]

Based on the above proposed condition, the Department recommends Council find that construction and operation of the facility would not impact the Deschutes Valley Water District's ability to provide water services.

Solid Waste Management

The closest public transfer station to the facility site is the Jefferson County Box Canyon Transfer Station operated by Madras Sanitary Service, located approximately 11 miles by car from the facility, and the Crook County Landfill, operated by Crook County, is located in Prineville approximately 40 miles by car from the facility. According to 2019 Oregon DEQ data, the Crook County Landfill is situated on a 1,640-acre site of which 75 acres have been used for disposal and has an estimated life of 50 additional years.[82] ASC Exhibit V,[83] indicates that the steel posts for solar panels would be recycled. The ultimate recycling or disposal of facility components on the landscape, including the wood monopoles and posts, would be addressed in the retirement plan presented to Council or development by Council under the bond for the facility under existing site certificate conditions. Therefore, the Department recommends that the facility, with RFA1 changes, would not impact the ability of waste disposal site to provide services.

Housing

A maximum estimate of 360 temporary new residents that may be associated with facility construction during the peak construction period.[84] Temporary construction workers are expected to utilize options that include hotels, campgrounds, recreational vehicle (RV) parks, and rental houses, all of which would be located within a commutable distance of 70 miles or 1 hour of travel to the facility. The certificate holder evaluated the availability of housing in preparation of RFA1 and estimates that lodging vacancy rates in Central Oregon are estimated at approximately 58 percent.[85] Based on vacancy rate and maximum number of workers, and potential availability of RV and campsites within the area, the Council found that temporary workers potentially residing in the analysis area during facility construction could result in limited housing availability but that it would be temporary and not be likely to result in significant adverse impacts on the providers of housing to provide service.

Health Care and Schools

[82] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 178-179.
[83] Rule changes since the final order on ASC has made the Waste Minimization Exhibit Letter W.
[84] MSEFAPPDoc1-21 Exhibit U Public-Services 2020-11-09, Section U.1.2.1
[85] MSEFAMD1 RFA1 2024-10-17, Section 6.13.

The nearest hospital to the facility is St. Charles Madras and is an approximate 9 mile drive from the facility. The St. Charles health care system, offers basic, intermediate, and advanced life support emergency medical care and transportation also has health care systems in Redmond, Prineville, and Bend. RFA1 indicates that health care facilities evaluated in the ASC are still in operation and still provide the same trauma levels of care as at the time of RFA1. Because most families do not relocate school age children to work on temporary construction positions, it is not anticipated that many school age children would join schools in the area. Based on the total new temporary residents during construction, and that construction is temporary, and few permanent residents during operation, the Department recommends Council continue to find that the facility is not likely to impact the ability of healthcare providers and the school district to provide their service.

Traffic Safety

The certificate holder maintains the same assumptions for worker traffic and transportation routes in RFA1 that was evaluated in the *Final Order on ASC*. It's estimated that a maximum of 490 roundtrips per day from a combination of trucks and worker vehicles travelling a roundtrip would occur if there was no carpooling to and from the site during construction. Primary haul routes proposed for use during construction include: US 26; US 26 to US 97; US 97 to SW Belmont Lane to SW Elk Drive.

Public Services Condition 1 (GEN-PS-01) continues to apply to the facility and requires the development and implementation of a Traffic Management Plan that includes project details, a road conditions survey, schedule, description of mobility impacts and mitigation measures, and communication. The Department highlights that many of the measures designated in Public Services Condition 1 may be met with an executed Road Use Agreement between the certificate holder and the County. Based on compliance with the existing site certificate condition, the Department recommends Council continue to find that the facility, with RFA1 changes, would not impact public providers pf traffic services and road conditions.

Air Traffic Safety

Airports within proximity to the site include the Madras Municipal Airport, a public airport located approximately 3 miles east, and the Bombay Farms Airport, a private airport located directly Southwest of the proposed site.[86] To determine, based on the final design of the facility, if the facility may impact nearby public airport, Council imposed Public Services Condition 2 (GEN-PS-02), which requires the submission and follow up to a FAA 7460-1 Notice of Proposed Construction or Alteration Forms to the Oregon Department of Aviation. The Department recommends Council find that the facility, with proposed changes, would not impact private and public providers of air traffic services.

[86] MSEFAPP Complete ASC Reviewing Agency Comment ODA_Thompson 2020-12-09.

Fire Protection

The facility has been annexed to be within the service boundaries for the Jefferson County Fire and Emergency Medical Services (EMS). In the *Final Order on ASC*, Council imposed Public Services Condition 3, which required that the certificate holder annex the facility site into the service territory of the Jefferson County Fire District #1. RFA1 Attachment 7 includes a letter from the Jefferson County Fire and EMS Fire Chief confirming that effective March 22, 2023, the location of the facility has been annexed into the service area for Jefferson County Fire and EMS.[87] As discussed in Section III.N., *Wildfire Prevention and Risk Mitigation*, since Council's approval of the ASC, it adopted a new standard to address wildfire and Wildfire Mitigation Plans (WMPs). The Department recommends incorporating the measures that were previously required under Public Services Condition 4 (provided in strike out below and recommended deleted) into the construction WMP attached to this order as Attachment F-1. The substantive elements of the previously adopted Public Services Condition 4, however, are modified for clarity, intent and implementation. For instance, as described in Section III.N. of this order, and in the construction WMP, pre-construction coordination with the local fire department(s) is required as well as pre-construction staff training and regular construction staff safety training during construction.

Recommended Deleted Public Services Condition 4: ~~The certificate holder shall:~~

~~a. Before beginning facility construction, submit to the Department for review, an Emergency Contingency Plan developed in coordination with Jefferson County Fire District #1. The Emergency Contingency Plan shall include but be not limited to:~~

~~i. Emergency response procedures and communication channels for the project as well as information regarding the various components of the facility based on final design and battery technology selected (if any);~~

~~ii. Procedures for on-site training for the certificate holder, construction contractor staff and staff and volunteers from the Jefferson County Fire District #1;~~

~~iii. Identification of the type and location for fire protection equipment, location(s) of water source(s), and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code.~~

~~b. During facility construction and operation:~~

~~i. Implement and adhere to the requirements of the Emergency Contingency Plan;~~

~~ii. Participate annually in any Jefferson County Fire District #1 meetings held by the Fire District related to the facility; and~~

~~iii. Verify and update applicable emergency contacts and emergency response procedures within the Plan.~~

[~~GEN-PS-03;~~ Deleted in Final Order on RFA1]

[87] In telephone correspondence with Jefferson County Fire and EMS on 09-30-2024, the Department confirmed that Jefferson County Fire District #1 (JCFD1) or Jefferson County Rural Fire District (JCRFD) was combined with emergency medical services and renamed to Jefferson County Fire and EMS.

Based on compliance with existing site certificate conditions and compliance with the WMP's for construction and operation of the facility under recommended Wildfire Prevention and Risk Mitigation Conditions 2 and 4, the Department recommends Council find the facility, with proposed RFA1 changes would not impact the ability of fire departments to respond to fires and emergencies.

Police Protection and Emergency Response

Local police service within the analysis area would be provided by the Jefferson County Sheriff's Office in Madras, Oregon.[88] Backup law enforcement service is available from the Oregon State Police Eastern Region, also with an office in Madras. As discussed in Section III.N, *Wildfire Prevention and Risk Mitigation*, the construction and operational WMP include coordination with local fire departments and emergency management personnel as well as specific procedures and instances in which on-site or remote personnel would contact authorities for assistance. Further, the WMP's include the development and implementation of Emergency Management Plans which would contribute to a reduction in police and law safety services. Based on compliance with site certificate conditions, and the Sheriff's indication of its ability to respond to emergencies on site, the Department recommends Council find that the facility, with RFA12 changes would not impact the ability of local law enforcement to provide services.

III.M.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and recommended site certificate conditions described above and, in this order, the Department recommends the Council find that construction and operation of the facility are not likely to result in significant adverse impacts to the ability of public and private providers to provide the services listed in OAR 345-022-0110.

III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115

(1) To issue a site certificate, the Council must find that:

(a) The applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, by identifying:

(A) Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, including but not limited to topography, vegetation, existing infrastructure, and climate;

[88] MSEFAPPDoc1-21_Exhibit_U_Public-Services 2020-11-09, Attachment U-2.

(B) Seasonal wildfire risk, based on factors that are expected to remain fixed for multiple months but may be dynamic throughout the year, including but not limited to, cumulative precipitation and fuel moisture content;

(C) Areas subject to a heightened risk of wildfire, based on the information provided under paragraphs (A) and (B) of this subsection;

(D) High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat; and

(E) All data sources and methods used to model and identify risks and areas under paragraphs (A) through (D) of this subsection.

(b) That the proposed facility will be designed, constructed, and operated in compliance with a Wildfire Mitigation Plan approved by the Council. The Wildfire Mitigation Plan must, at a minimum:

(A) Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;

(B) Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in the areas identified under subsection (a) of this section;

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source; and

(E) Describe methods the applicant will use to ensure that updates of the plan incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

(2) The Council may issue a site certificate without making the findings under section (1) if it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

(3) This Standard does not apply to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 on or before the effective date of this rule.[89]

III.N.1. Findings of Fact

The analysis area to evaluate potential wildfire risks is the site boundary and one-half mile from the site boundary.[90]

Wildfire Risk Analysis

Under OAR 345-022-0115(1)(a), a certificate holder must adequately characterize the wildfire risk within the analysis area using reputable sources to describe Baseline Wildfire Risk, Seasonal Wildfire Risk, Areas Subject to Heightened Risk of Wildfire, and High-fire Consequence Areas. Each of these are discussed in detail in this section with a description of the data source, as necessary to support the findings and recommended conclusions. The data sources used to evaluate wildfire risk are listed in RFA1 Exhibit V, Section 1.0 and include but are not limited to:

- National Interagency Fire Center 2024 data;
- Community Wildfire Protection Plan Planning Tool; 2018 Quantitative Wildfire Risk Assessment;
- Conservation Biology Institute 2020 data;
- Jefferson County 2022 Multi-Jurisdictional Natural Hazard Mitigation Plan and Community Wildfire Protection Plan;
- Oregon Department of Forestry 2024 Wildfire Risk Explorer;
- Pyrologix, United States Forest Service 2018 Pacific Northwest Quantitative Wildfire Risk Assessment.

Baseline Wildfire Risk

Baseline wildfire risk within the analysis area is evaluated based on factors expected to remain fixed for multiple years, including topography of the site, vegetation, existing infrastructure, regional climate, and burn probability. These are discussed in RFA1 Exhibit V, Section 2.1, incorporated herein and summarized, in part, below:

Wildfires tend to travel quicker on steeper slopes and slower on the flatter portions of land. All of the area within the site boundary is relatively flat and have slopes ranging from 0 to 25 degrees. The predominant vegetation within the site is annual grassland and Rabbitbrush shrub-steppe and are best represented by Fuel Model 122 which is categorized as Moderate load dry climate grass-shrub.[91]

[89] OAR 345-022-0115, effective July 29, 2022.
[90] OAR 345-001-0010(35)(c).
[91] MSEFAMD1 RFA1 2024-10-17, Table V-2.

Existing infrastructure within the wildfire analysis area includes the Pelton Dam to Round Butte 230-kilovolt transmission line, Lake Simtustus Resort, a residence, and multiple public rights-of ways. NW Pelton Dam Road and NW Elk Drive paved public rights-of-ways extend south through the site boundary as well, otherwise there isn't any infrastructure within the site boundary. This description is consistent with the identification of infrastructure in the 2022 Jefferson County CWPP.[92]

Seasonal Wildfire Risk

Seasonal wildfire risk within the analysis area is expected to remain fixed for multiple months but may be dynamic throughout the year, including cumulative annual and monthly precipitation, weather advisories which include fuel moisture content data, and Average Flame Length which is the average length of flames expected during a fire, given local fuel and weather conditions. These are discussed in RFA1 Exhibit V, Section 2.1, incorporated herein and briefly summarized below:

> The total average annual precipitation for Madras is 11.2 inches per year, which is indicative of a semi-arid climate. Fuel model groups within the wildfire analysis area consist of grass, shrubs, open water, bare ground, and urban/suburban. The most prominent fuel models within the site boundary are FM 122 (57 percent) and FM 102 (35 percent). The primary carrier of fire in FM 122 is grass and shrubs; which have an overall high spread rate. The moisture of extinction for this fuel type is low.

Areas Subject to Heightened Risk of Wildfire and High-Fire Consequence Areas

High-fire consequence areas include areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat As described above under the *Baseline Wildfire Risk for Existing Infrastructure* section, the areas within the analysis area having higher wildfire risk are the areas with existing infrastructure, including transmission lines, roads, and residences.[93] Within the site boundary, there is the existing Pelton Dam to Round Butte 230 kV transmission line operated by PGE and NW Pelton Dam Road and NW Elk Drive which are both paved. The Department recommends Council find that the Pelton Dam to Round Butte 230 kV transmission line is a high-fire consequence area/resource, however, because the roads are paved with a 60 foot set back (see Figure 6 below) from the facility fence line, these roads would act as fire breaks and wouldn't need to be considered high-fire consequence areas/resources.

The 2018 CWPP Mapping tool provides Overall Fire Risk Ratings, which measures vulnerability of assets by the presence of the assets within the fire's path, and the likelihood of that asset being harmed. This data layer maps highly valued resources and assets combined: critical infrastructure, developed recreation, housing unit density, seed orchards, sawmills, historic

[92] Jefferson Country Infrastructure, Figure on page 75/80. https://www.jeffco.net/media/26456 Downloaded and Accessed by Department 09-26-2024.

[93] RFA1 Exhibit V, Section 2.3 and 2.4.

structures, timber, municipal watersheds, vegetation condition, and terrestrial and aquatic wildlife habitat.[94] The site boundary has a 13 percent very high overall fire risk rating and 40 percent high overall fire risk rating, which are illustrated in Figure 4 below. Figure 4 below, shows that the heightened wildfire risk follows the route of the existing transmission line as well as existing roads within the site boundary.

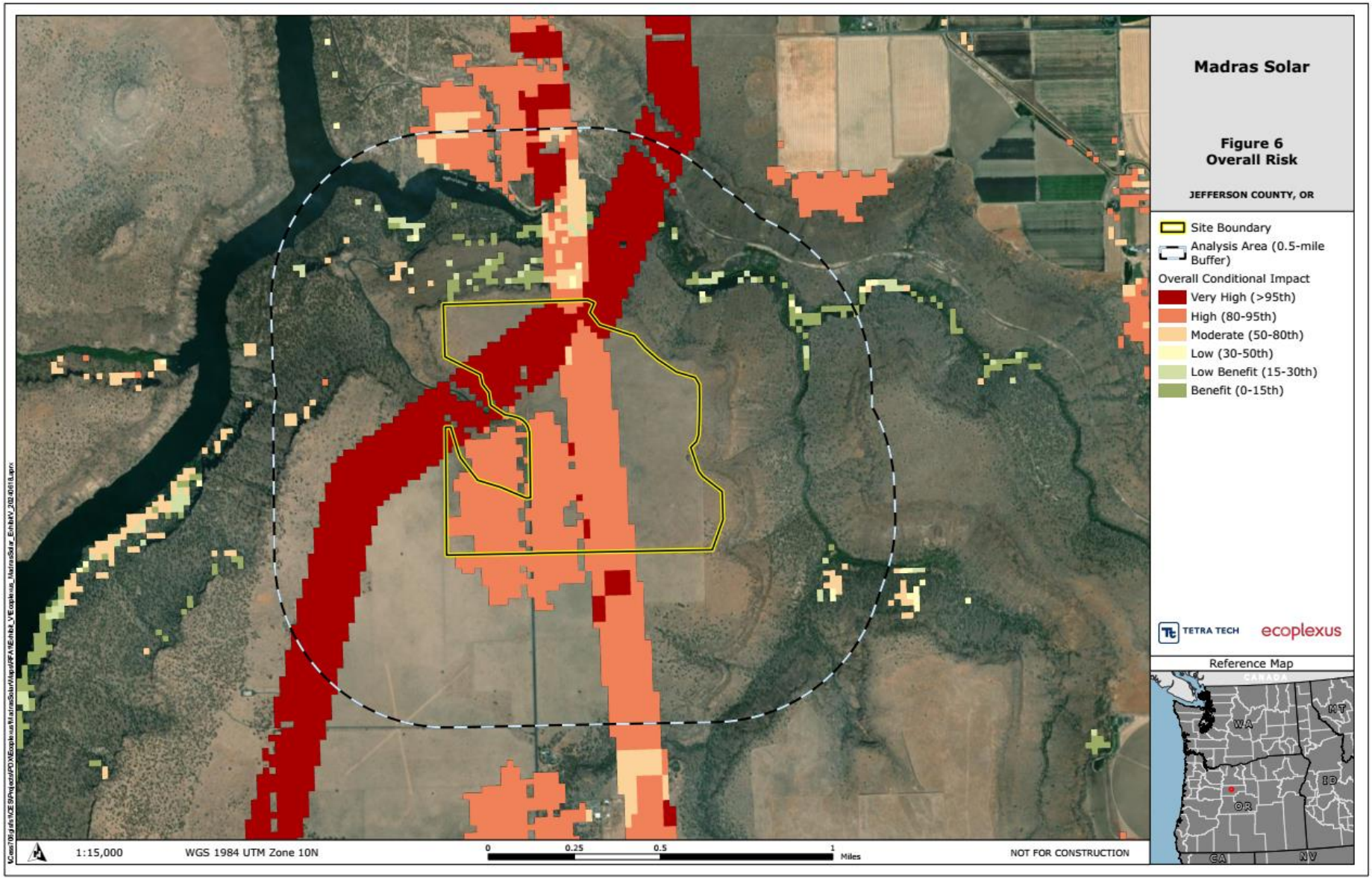
Jefferson County 2020 Community Wildfire Protection Plan (Jefferson County CWPP) is a county-wide, strategic assessment of the risks, hazards, mitigation and prevention opportunities associated with wildfire and communities. It includes designations of Wildland Urban Interfaces (WUI) which are determined using geographical areas where structures and other human development meets or intermingles with wildland vegetative fuels. The Plan shows that the facility is partially located within a WUI categorized as Low Density (portions of the site are in uncategorized area).[95] The Jefferson County CWPP also evaluates fire risk classifications from high to high density extreme shows that the facility site is located within a high wildfire risk area (the lowest risk on their scale), this is illustrated in Figure 4 below.[96]

[94] This data layer contains all the resources required under OAR 345-022-0115(1)(D); High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat.

[95] Jefferson Country Wildland Urban Interface (second Figure), *Id*.

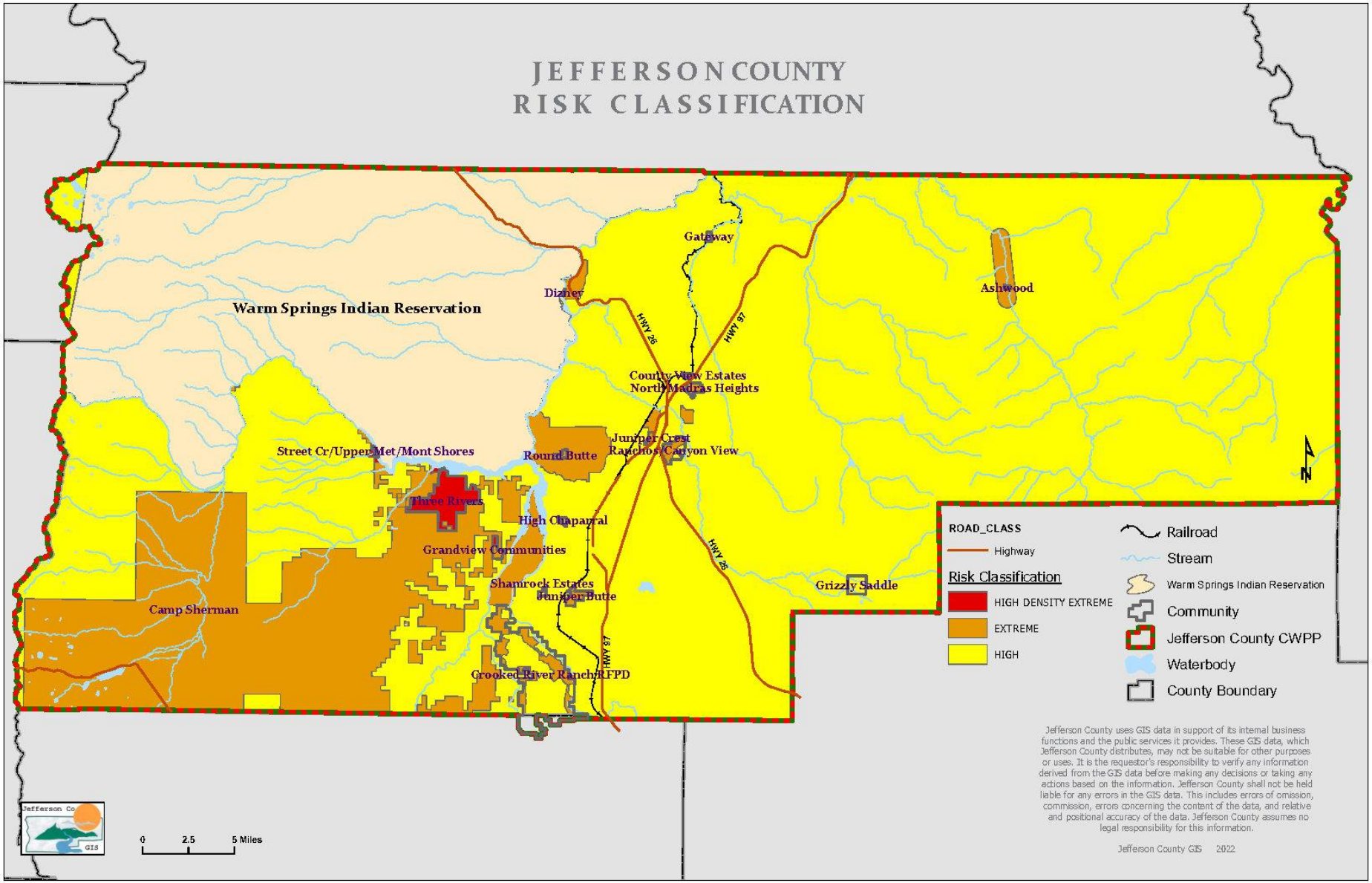
[96] Jefferson Country Risk Classification, Figure on page 75/80 (Figures not numbered). https://www.jeffco.net/media/26456 Accessed by Department 09-26-2024.

Figure 4: Overall Wildfire Risk (2018 CWPP Planning Tool)



1

Figure 5: Jefferson County 2020 CWPP



1

Wildfire Mitigation Plan

Under OAR 345-022-0115(1)(b), Council must find that the facility will be designed, constructed, and operated in compliance with a Wildfire Mitigation Plan (WMP) approved by Council. During the review of the pRFA1 the Department provided the certificate holder with revisions to the WMP's which reflect the Department and Council's ongoing work regarding the sufficiency of the Plans under the standard. The recommended changes provided to and adopted by the certificate holder are described in this section and based on:

- Ongoing coordination with ODF, local fire departments and emergency managers;
- Council's feedback from other energy facilities, and review of the standard and WMP's during the September 2024 EFSC Meeting;
- Review of ODF Fire Season Requirements;
- Review of Oregon Emergency Response System (OERS) and utilization of county emergency notifications and incident response.

In its ongoing effort to refine Council's WMP's to clearly and meaningfully prevent and mitigate the chance of wildfire igniting on-site and spreading from a facility site or from outside fires impacting a facility, the Department coordinated with local fire Department and the emergency management agencies to understand the best procedures to follow in the event of an emergency as well as appropriate equipment to maintain on-site.

The Oregon Department of Emergency Management (OEM) manages operation of the statewide 9-1-1 communications system which ensures uniform, prompt, and efficient access to public and private safety services. OEM maintains the statewide emergency services system for emergency and disaster communications and manages Oregon Emergency Response System (OERS), which coordinates state resources in response to natural and technological emergencies involving multi-jurisdictional cooperation between all levels of government and the private sector.[97] In the event of a fire or other emergency, by dialing 9-1-1, operators are able to quickly contact local fire departments and emergency responders to manage the fire. The local fire department(s) have a chain of communication system to call in other resources to assist in a larger event or fire. In Jefferson County, this is detailed in the 2024 Emergency Operations Plan (EOP) which includes an Incident Annex IA 3, a Major Fire Incident Checklist that includes detailed protocols and chains of communications for the County to follow.[98] Under ORS 401.305, each County in Oregon has established an emergency management office. Each of Oregon's 36 counties has an emergency notification system that any person can register for to receive emergency notifications. Frontier Regional Emergency Alert Program is the emergency notification system for the Jefferson County Emergency Management Office which can be access via the County or via OEM. The notification system enables the County to provide individuals with critical information quickly in a variety of situations, such as severe weather, unexpected road closures, missing persons and evacuations of buildings or neighborhoods.

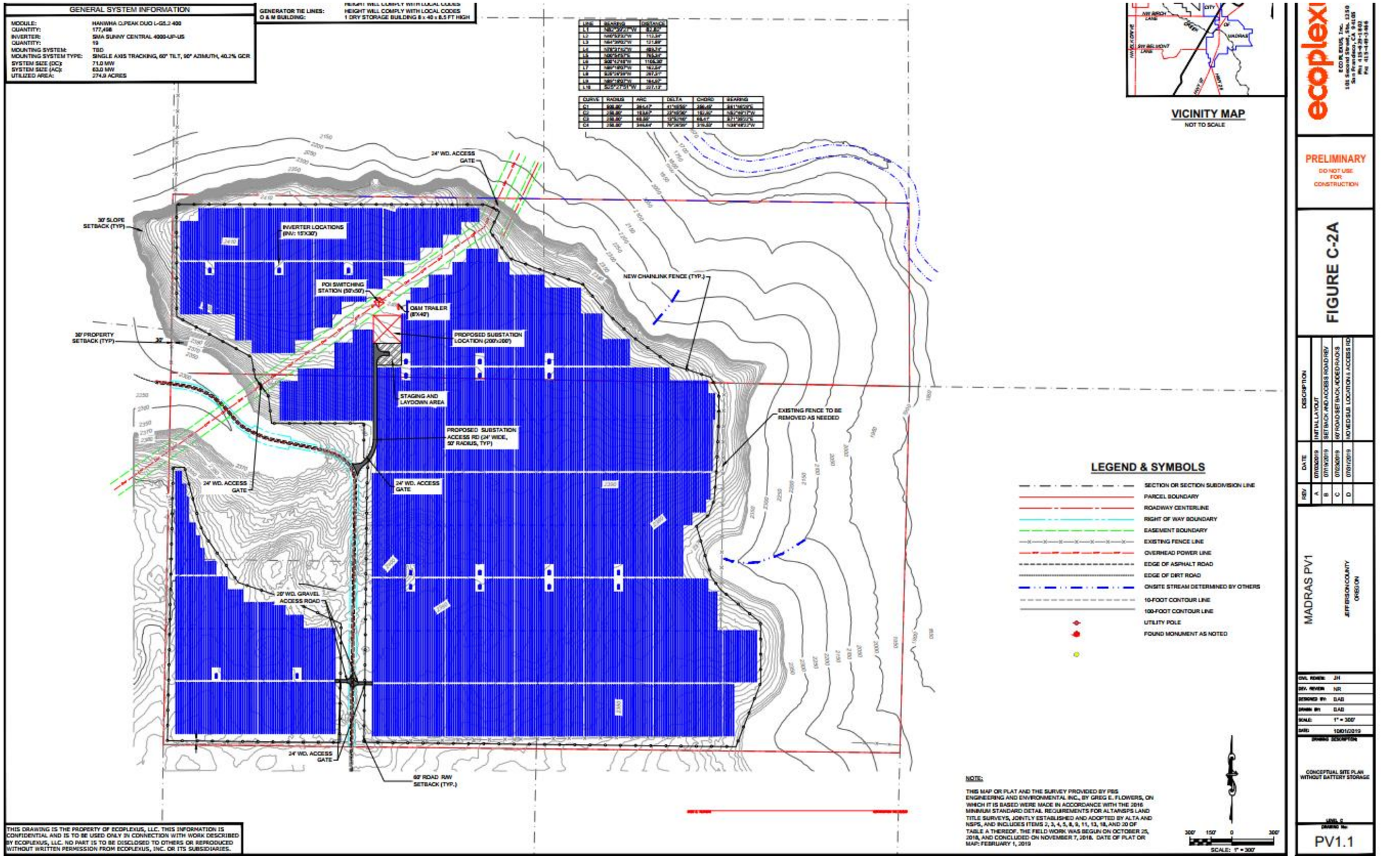
[97] OEM responsibilities are defined and authorized in ORS 401.

[98] https://www.jeffco.net/media/29326 Incident Annex IA 3 – Major Fire. Accessed by Department 10-09-2024

As summarized in the below sections, the Department recommends that 9-1-1 be the primary contact for emergencies that cannot be addressed onsite and that need external emergency resources. Further, to help ensure that adjacent landowners (landowners within 0.5 miles of the site boundary) are registered to receive emergency alerts, the Department recommends the certificate holder contact individuals to see if they have already signed up for the Frontier Regional Emergency Alert Program, and if not, the certificate holder will provide registration information.

The construction and operational WMPs are included in RFA1 as Attachments F-1 and F-2, respectively. Both the construction and operational WMP's include recommendations provided by the Department. As noted above, the WMP's provided in RFA1 reflect substantive revisions provided to the certificate holder by the Department. The additional redline revisions presented in the WMP's attached to this order are provided for clarity and implementation as well as to add reference to high-fire consequence areas/resources identified in this section. Within the site boundary, the high-fire consequence area/resource is the existing Pelton Dam to Round Butte 230 kV transmission line operated by PGE. As illustrated in Figure 6 below, the existing transmission line has a ROW that would be avoided by the facility, therefore, the Department recommends Council finds that this avoidance area is sufficient to mitigate any potential impacts from fire to the resource, which is indicated in both the WMP's.

Figure 6: Preliminary Facility Design with Setbacks



Facility Design

Facility design standards and measures that would minimize wildfire risk include but are not limited to the following:

Fire Breaks and Vegetative Clearances:

- The collector substation area, transformer pads, the permanent, fenced parking and O&M building storage areas, and Battery Storage Systems will have a gravel base with no vegetation within a 10-foot perimeter area;
- Graveled service roads within the solar fence line, approximately 14 feet wide with 2-foot shoulders.
- A 10- foot noncombustible, defensible space clearance along the fenced perimeter of the site boundary will be maintained for vegetation. Defensible space will be free of combustible vegetation or other materials.

Electrical Components:

- Facility components will meet National Electrical Code and Institute of Electrical and Electronics Engineers standards.
- The solar array will have shielded electrical cabling, as required by applicable code, to prevent electrical fires.
- The collector system and substation will have redundant surge arrestors to deactivate the facility during unusual operational events that could start fires. The collector substation and the switchyard will have also sufficient spacing between equipment to prevent the spread of fire.
- The SCADA system collects operating and performance data from the solar array and from the facility as a whole and allows remote operation, including shut down in the event of an emergency, from the O&M building.
- Smoke/fire detectors will be placed around the site that will be tied to the SCADA system and will contact local firefighting services.

Facility Construction

As discussed in Section III.M., *Public Services*, Council previously imposed Public Services Condition 4 (GEN-PS-03), which required a construction emergency management plan be developed in coordination and trainings held with Jefferson County Fire and EMS.[99] Since that approval, Council adopted its Wildfire standard, therefore the substantiative elements of GEN-PS-03 have been included in the attached construction WMP, and the previously imposed conditions is recommended to be deleted to reduce duplication.

As described below, the construction WMP has tasks and actions associated with finalizing the WMP, pre-construction tasks, and tasks and actions that must be implemented during construction of the facility. To help the certificate holder ensure the action items are completed, and for the Department to track compliance with them, the Department is

[99] Previously called Jefferson County Fire District #1.

preparing Compliance Checklists that will be attached to the construction WMP, as indicated in the Plan.

As recommended in Wildfire Prevention and Risk Mitigation Condition 1 below, the construction WMP (Attachment F-1 to this order) would be finalized prior to construction to include (but is not limited to):

- Incorporate guidance from the Jefferson County CWPP;
- Include feedback from local fire districts, as well as local emergency management about measures in the WMP;
- Identify the appropriate set up for water trucks including pump, hose and nozzle;
- Provide maps with access points, emergency access procedures particularly when personnel are not onsite, and the location and buffers for any newly identified high-fire consequence areas/resources;
- Include updated contact information for certificate holder and contractors and confirm they have registered for the Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management;
- Provide a list of property owners and tenants for residences within 0.5 miles from the site boundary;
- Confirm if property owners or tenants have registered for Frontier Regional Emergency Alert Program, the emergency notification system. If residents have not registered, provide them with information and encourage them to do so.

As designated in the WMP, prior to construction the certificate holder would:

- Hold a construction kick off meeting with contractors and personnel to train personnel on fire prevention measures in the WMP, proper usual for fire protection equipment including the use of the water truck, pump and hose, safety procedures including procedures during Red Flad weather conditions and Warnings.
- Notify and submit to the local fire department(s):
    - Primary contacts for the certificate holder and construction personnel;
    - The date construction will begin;
    - The days and times construction will occur;
    - A description of the general construction phasing;
    - A description and maps of:
        - Access points to the facility, with a description of emergency access procedures, particularly when personnel will not be onsite;
        - The water source(s) and specifications for water pump, hose and nozzle.
        - Location of fire protection equipment.
        - Procedures to follow and BMPs for activities during Red Flad weather conditions and Warnings.

To ensure that the construction WMP would be finalized in an effective manner to include all of the applicant representations and Department recommendations and that the pre-construction

training and local fire department notifications are completed, the Department recommends Council impose the following condition:

> **Recommended Wildfire Prevention and Risk Mitigation Condition 1 (PRE):** Prior to construction of the facility or phase, as applicable, the certificate holder shall:
>
> a. Finalize the Construction Wildfire Mitigation Plan, as provided in Attachment F-1 to the Final Order on RFA1. The final Construction Wildfire Mitigation Plan shall be submitted to the Department for review and approval.
>
> b. Complete pre-construction tasks and actions designated in the Construction Wildfire Mitigation Plan approved under sub a of PRE-WF-01.
>
> [PRE-WF-01, Final Order on AMD1]

Finally, the construction WMP includes measures that would be deployed during construction on an ongoing basis to reduce, prepare for and respond to wildfire emergencies. These measures include:

- Holding meetings to ensure construction personnel are trained on proper use of fire prevention equipment and procedures;
- Updating the list of property owners and tenants within 0.5 miles of the facility, confirming and encouraging them to register for the Frontier Regional Emergency Alert Program, the County's emergency notification system;
- Maintaining vegetation to not exceed 10-12 inches in height, defensible spaces as described in the plan, and to not store brush piles on-site;
- Procedures for updating on-site personnel about Red Flag Warning Weather Conditions and restrictions in work areas (including setbacks from the buffer areas for high fire consequence areas/resources) during Red Flag weather.
- Contacting 911 in the event of an emergency on site that cannot be addressed by personnel, or a fire started on-site that has spread off-site, or an off-site fire that does not appear to have emergency personnel on site.

To ensure the facility is constructed in compliance with a construction WMP, the Department recommends Council impose the Recommended Wildfire Prevention and Risk Mitigation Condition 2 which would require that the construction WMP be implemented by the certificate holder and its contractors during facility construction:

> **Recommended Wildfire Prevention and Risk Mitigation Condition 2 (CON):** During construction of the facility or phase, as applicable, the certificate holder shall implement and require all onsite contractors and employees to adhere to, the Construction Wildfire Mitigation Plan required under PRE-WF-01. Updates to the Wildfire Mitigation Plan may be required if determined necessary by the certificate holder, certificate holder's contractor(s) or the Department to address wildfire hazard to public health and safety. Any Department required updates shall be implemented within 14 days, unless otherwise agreed to by the Department based on a good faith effort to address wildfire hazard.
>
> [CON-WF-01, Final Order on AMD1]

Facility Operation:

As described below, the operational WMP has tasks and actions associated with finalizing the WMP, pre-operational tasks, and tasks and actions that must be implemented during ~~construction~~ operation of the facility. To help the certificate holder ensure the action items are completed, and for the Department to track compliance with them, there will be Compliance Checklists that will be attached to the operational WMP, as indicated in the plan.

As recommended in Wildfire Prevention and Risk Mitigation Condition 3 below, the operational WMP (Attachment F-2 to this order) would be finalized prior to operation to include:

- Incorporate guidance from the Jefferson County CWPP that would apply to operations;
- Include feedback from local fire districts, as well as local emergency management about measures in the WMP;
- Identify water sources that will be on site during fire season and confirm specifications for pump, hose and nozzle;
- Provide maps with access points, emergency access procedures particularly when personnel are not onsite, and the location and buffers for any newly identified high-fire consequence areas/resources;
- Include updated contact information for certificate holder and operational managers;
- Provide a list of property owners and tenants for residences within 0.5 miles from the site boundary;
- Confirm if property owners or tenants have registered for Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management. If residents have not registered, provide them information and encourage them to do so;
- Provide maps that identify and describe the location of facility components and emergency shut offs, emergency access procedures, including how emergency responders and/or adjacent landowners may access site for fire protection equipment or to extinguish an on-site fire when personnel will not be onsite.

As designated in the WMP, prior to operation the certificate holder would:

- Hold an on-site meeting inviting equipment manufacturers, specialty contractors, local fire department(s), emergency management office personnel, the Department, and any other emergency management agency and provide training on fire prevention measures in the WMP, proper usual for fire protection equipment including the use of the water truck, pump and hose, safety procedures including procedures during Red Flad weather conditions and Warnings.
- Submit to the local fire department(s):
    - The location of facility components and emergency shut offs;
    - A description of emergency access procedures, including how emergency responders and/or adjacent landowners may access site for fire protection equipment or to extinguish an on-site fire when personnel will not be onsite;

- The set up and location(s) of water source(s) that will be on-site during fire season;
- The identification of any hazardous chemicals and appropriate emergency procedures.

To ensure that the operational WMP would be finalized in an effective manner to include all of the applicant representations and Department recommendations and that the pre-operational training and local fire department notifications are completed, the Department recommends Council impose the following condition:

> **Recommended Wildfire Prevention and Risk Mitigation Condition 3 (PRO)**: Prior to operation of the facility or phase, as applicable, the certificate holder shall finalize the operational Wildfire Mitigation Plan (WMP), included as Attachment F-2 to the Final Order on RFA1.
> [PRO-WF-01, Final Order on AMD1]

Finally, the operational WMP includes measures that would be deployed during operation on an ongoing basis to reduce, prepare for and respond to wildfire emergencies.[100] These measures include:

- Holding meetings and inviting fire department(s), the Department, and emergency managers to be trained on the location of facility components, proper use of fire prevention equipment and response procedures;
- Updating the list of property owners and tenants within 0.5 miles of the facility;
- Contacting 911 in the event of an emergency on site that cannot be addressed by personnel on-site, or a fire started on-site that has spread off-site, or an off-site fire that does not appear to have emergency personnel on site;
- Conducting regular vegetation surveys in advance of fire season and mowing or addressing any vegetation that has grown too tall or encroached near electrical equipment or defensible space;[101]
    - Maintaining vegetation to not exceed 10-12 inches in height, defensible spaces, and fire breaks such as graveled perimeter and service roads as described in the plan;
- Procedures for updating on-site personnel about Red Flag Warning Weather Conditions and restrictions in work areas (including setbacks from the buffer areas for high fire consequence areas/resources) during Red Flag weather;
- Water sources such as a water truck, including a pump, hose and appropriate nozzle must be on-site during fire season.

Table 2 of the operational WMP indicates the duration, standard and procedures for inspections of facility electrical components.[102] The solar inverters would be inspected monthly,

[100] OAR 345-022-0115(1)(b)(C).
[101] OAR 345-022-0115(1)(b)(B).
[102] *Id*.

the substation would be inspected annually, and the overhead electrical lines would be inspected on a bi-annual basis. These requirements would be required to be implemented under Recommended Wildfire Prevention and Risk Mitigation Condition 4 below.

Plan Updates

The operational WMP will be reviewed and updated as necessary each year. Each year, the certificate holder will fill out and submit the Operational WMP Compliance Checklist in the annual report submitted to the Department.

Under General Standard of Review Condition 5 (GEN-GS-04), if any emergency incidents occur on-site, or if the certificate holder becomes aware of a significant environmental change or impact attributable to the facility the certificate holder shall submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.[103]

Updates to the WMP will account for changes in local fire protection agency personnel and changes in best practices for minimizing and mitigating fire risk. After each five-year review, a copy of the updated plan will be provided to the Department with the annual compliance report required under OAR 345-026-008(2), required under General Standard of Review Condition 11. As required under OAR 345-022-0115(1)(b), because the facility site has a high wildfire risk, and to reflect the certificate holders representations to evaluate and reduce the risk of wildfire during operation of the facility in compliance with the WMP, the Department recommends Council impose the following condition:

> **Recommended Wildfire Prevention and Risk Mitigation Condition 4 [OPR]**: During operation, the certificate holder shall:
>
> a. Implement the Operational Wildfire Mitigation Plan, included as Attachment F-2 to the Final Order on RFA1.
> b. After the first operational year, annually review and update the evaluation of wildfire risk under OAR 345-022-0115(1)(b) and submit the results in the annual report for that year.
> c. Submit an updated Operational Wildfire Mitigation Plan to the Department if substantive changes are made to the plan because of the review under sub (b) of this condition, or at any other time substantiative revisions are made to Attachment F-2 of the Final Order on RFA1.
> d. Updates to the Wildfire Mitigation Plan may be required if determined necessary by the certificate holder, certificate holder's contractor(s) or the Department to address wildfire hazard to public health and safety. Any Department required updates shall be implemented within 14 days, unless otherwise agreed to by the Department based on a good faith effort to address wildfire hazard. [OPR-WF-01; Final Order on AMD1]

[103] Mandatory Condition OAR 345-025-0006(6).

III.N.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the recommended site certificate conditions described above, the Department recommends the Council find that the certificate holder has adequately characterized wildfire risk within the analysis area using current data from reputable sources, and that, subject to Council approval, the facility will be designed, constructed, and operated in compliance with Wildfire Mitigation Plans.

III.O. WASTE MINIMIZATION: OAR 345-022-0120

> *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:*
>
> *(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;*
>
> *(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.*
>
> *(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*
> *(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*[104]

III.O.1. Findings of Fact

As indicated in Table 1 of this order, the certificate holder proposes to increase the quantities of facility components (solar panel posts and wood monopoles) that were previously reviewed and approved in the *Final Order on ASC*. The impacts from construction and operation of the facility and actions to minimize the generation and disposal of solid and wastewater wastes, with the RFA1 construction deadline extension and facility component increase, are not significantly different from that which was previously approved. Prior findings are incorporated herein by reference and direct incorporation, as applicable, and briefly summarized below.[105]

[104] OAR 345-022-0120, effective May 15, 2007.

[105] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 189-193; MSEFAPP ASCDoc1-22_Exhibit_V_Waste 2020-11-09; MSEFAPP ASCDoc1-21_Exhibit_U_Public-Services 2020-11-09.

Solid Waste

During construction, approximately one 40-cubic-yard roll-off per week would be generated.[106] The solid waste generated includes general construction debris such as scrap metal (steel, copper, and aluminum), packing materials (from installed solar photovoltaic modules and associated electrical equipment), waste concrete, and excavated soil.

During operations, the primary waste generated would be solid waste from maintenance and ongoing operational activities, which includes maintenance and replacement of solar panels and battery systems. Solar panels that are nonfunctional, exchanged during operations or are retired would be recycled to the maximum extent feasible through the Solar Energy Industries Association National PV Recycling Program.[107] Lithium-ion batteries would need to be changed approximately every 5 to 10 years. Whereas flow batteries have a life span of approximately 10 to 20 years and need to be replaced at least once during operation of the facility. Lithium-ion battery modules require replacement periodically as the modules lose their effectiveness through repeated charge/discharge cycles.

Council previously adopted Waste Minimization Condition 1 (GEN-WM-01) which requires the development and implementation of a Waste Management Plan that would identify measures to minimize and recycle waste materials, to the maximum extent possible, including solar panels and batteries. As imposed, the condition requires that a Waste Management Plan be developed and would apply to construction, operation and retirement activities. However, as described in the *Final Order on ASC,* Retirement and Financial Assurance Condition 2 (RET-RF-01) requires the certificate holder to retire the facility in accordance with a Council approved retirement plan. The retirement plan must include a description of the activities necessary to restore the site to a useful nonhazardous condition, including waste minimization measures. Therefore, the Department recommends Council amend Waste Minimization Condition 1 (GEN-WM-01) and remove the decommissioning requirement of submitting a Waste Management Plan to the Department for review and approval. This recommended amendment to Waste Minimization Condition 1 is provided in Attachment A of this order.

Wastewater

Wastewater generated during construction would result from the use of portable toilets, which would be managed by a local contractor for disposal off site in accordance with state law.

During operations, solar panels may need to be washed, however washwater would not include cleaning solvents, and would be discharged by evaporation and seepage into the ground, as required in Soil Protection Condition 2 (PRO-SP-01).

[106] MSEFAPPDoc1-22 Exhibit V Waste 2020-11-09, Section V.2.1.

[107] MSEFAPPDoc1-22 Exhibit V Waste 2020-11-09, Section V.3.

III.O.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and recommended amended site certificate conditions described above, the Department recommends the Council find that the certificate holder's solid waste plans(s) are likely to minimize generation of solid waste and wastewater during construction and operation of the facility, would result in recycling and reuse of such wastes, and would manage the accumulation, storage, disposal and transportation of wastes in a manner that will result in minimal adverse impacts to surrounding and adjacent areas.

III.P. SITING STANDARDS FOR TRANSMISSION LINES – OAR 345-024-0090

> *To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:*
>
> *(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;*
>
> *(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.*[108]

III.P.1. Findings of Fact

The Siting Standard for Transmission Lines under OAR 345-024-0090(1) sets a limit for electric fields from transmission lines of not more than 9-kV per meter at one meter above the ground surface *in areas that are accessible to the public*. [Emphasis added] Section (2) of the rule requires implementation of measures to reduce the risk of induced current.

Electro-magnetic fields

As described in the *Final Order on ASC* and in RFA1, the approved point of interconnect switching station would be located directly adjacent to the Pelton Dam to Round Butte 230-kV transmission line, overhead cables connecting the two components will be located near the middle of the facility layout, directly adjacent to the existing 230-kV transmission line, located behind multiple security fences, and would be inaccessible to the public. The facility layout is not changed in RFA1, therefore, Council's conclusions from the *Final Order on ASC* remain the same for RFA1.

[108] OAR 345-024-0090, effective May 15, 2007.

Induced-Currents and Grounding

Council previously adopted General Standard Condition 8 (GEN-GS-06) [based on the mandatory condition contained in OAR 345-025-0010(4)], which requires, in part, the certificate holder develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line. This condition continues to apply to the facility and demonstrates that the facility can be designed, constructed and operated so that induced currents would be as low as reasonably achievable.

III.P.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate condition described above, the Department recommends the Council find that the certificate holder can design, construct, and operate the facility, with proposed RFA1 changes, so that alternating current electric fields do not exceed 9-kV per meter at one meter above the ground surface in areas accessible to the public and that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

IV. EVALUATION OF OTHER APPLICABLE REGULATORY REQUIREMENTS

IV.A. Noise Control Regulations: OAR 340-035-0035

(1) Standards and Regulations:

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 7, except as otherwise provided in these rules.

(b) New Noise Sources:

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b)–(f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

*****

(c) Quiet Areas. No person owning or controlling an industrial or commercial noise source located either within the boundaries of a quiet area or outside its boundaries shall cause or permit the operation of that noise source if the statistical noise levels generated by that source exceed the levels specified in Table 9 as measured within the quiet area and not less than 400 feet (122 meters) from the noise source.

(d) Impulse Sound. Notwithstanding the noise rules in Tables 7 through 9, no person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the sound pressure levels specified below, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule:

(A) Blasting. 98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.

(B) All Other Impulse Sounds. 100 dB, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.

(e) Octave Bands and Audible Discrete Tones. When the Director has reasonable cause to believe that the requirements of subsection (1)(a), (b), or (c) of this rule do not adequately protect the health, safety, or welfare of the

public as provided for in ORS Chapter 467, the Department may require the noise source to meet the following rules:

(A) Octave Bands. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceeds applicable levels specified in Table 10.

(B) One-third Octave Band. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

(i) 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(ii) 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(iii) 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;

(iv) This rule shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in Table 10 for the octave band which contains such one-third octave band.

(2) Compliance. Upon written notification from the Director, the owner or controller of an industrial or commercial noise source operating in violation of the adopted rules shall submit a compliance schedule acceptable to the Department. The schedule will set forth the dates, terms, and conditions by which the person responsible for the noise source shall comply with the adopted rules.

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department;

(b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:

(A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;

(B) That point on the noise sensitive property line nearest the noise source.

(4) Monitoring and Reporting:

(a) Upon written notification from the Department, persons owning or controlling an industrial or commercial noise source shall monitor and record the statistical noise levels and operating times of equipment, facilities, operations, and activities, and shall submit such data to the Department in the form and on the schedule requested by the Department. Procedures for such measurements shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1);

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise tests and measurements. Therefore, when requested by the Department, the owner or operator of an industrial or commercial noise source shall provide the following:

(A) Access to the site;

(B) Reasonable facilities, where available, including but not limited to, electric power and ladders adequate to perform the testing;

(C) Cooperation in the reasonable operation, manipulation, or shutdown of various equipment or operations as needed to ascertain the source of sound and measure its emission.

(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of this rule, the rules in section (1) of this rule shall not apply to:

(a) Emergency equipment not operated on a regular or scheduled basis;

(b) Warning devices not operating continuously for more than 5 minutes;

(c) Sounds created by the tires or motor used to propel any road vehicle complying with the noise standards for road vehicles;

(d) Sounds resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad only to the extent that such equipment or facility is regulated by pre-emptive federal regulations as set forth in Part 201 of Title 40 of the Code of Federal Regulations, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-576; but this exemption does not apply to any standard, control, license, regulation, or restriction necessitated by special local conditions which is approved by the Administrator of the EPA after consultation with the Secretary of Transportation pursuant to procedures set forth in Section 17(c)(2) of the Act;

(e) Sounds created by bells, chimes, or carillons;

(f) Sounds not electronically amplified which are created by or generated at sporting, amusement, and entertainment events, except those sounds which are regulated under other noise standards. An event is a noteworthy happening and does not include informal, frequent, or ongoing activities such as, but not limited to, those which normally occur at bowling alleys or amusement parks operating in one location for a significant period of time;

(g) Sounds that originate on construction sites.

(h) Sounds created in construction or maintenance of capital equipment;

(i) Sounds created by lawn care maintenance and snow removal equipment;

(j) Sounds generated by the operation of aircraft and subject to pre-emptive federal regulation. This exception does not apply to aircraft engine testing, activity conducted at the airport that is not directly related to flight operations, and any other activity not pre-emptively regulated by the federal government or controlled under OAR 340-035-0045;

(k) Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030(1)(e);

(l) Sounds created by agricultural activities;

(m) Sounds created by activities related to the growing or harvesting of forest tree species on forest land as defined in subsection (1) of ORS 526.324.

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:

(a) Unusual and/or infrequent events;

(b) Industrial or commercial facilities previously established in areas of new development of noise sensitive property;

(c) Those industrial or commercial noise sources whose statistical noise levels at the appropriate measurement point are exceeded by any noise source external to the industrial or commercial noise source in question;

(d) Noise sensitive property owned or controlled by the person who controls or owns the noise source;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use.[109]

DEQ 23-2018, minor correction filed 04/02/2018, effective 04/02/2018
DEQ 24-2017, minor correction filed 11/08/2017, effective 11/08/2017
DEQ 14-2017, amend filed 10/30/2017, effective 11/02/2017

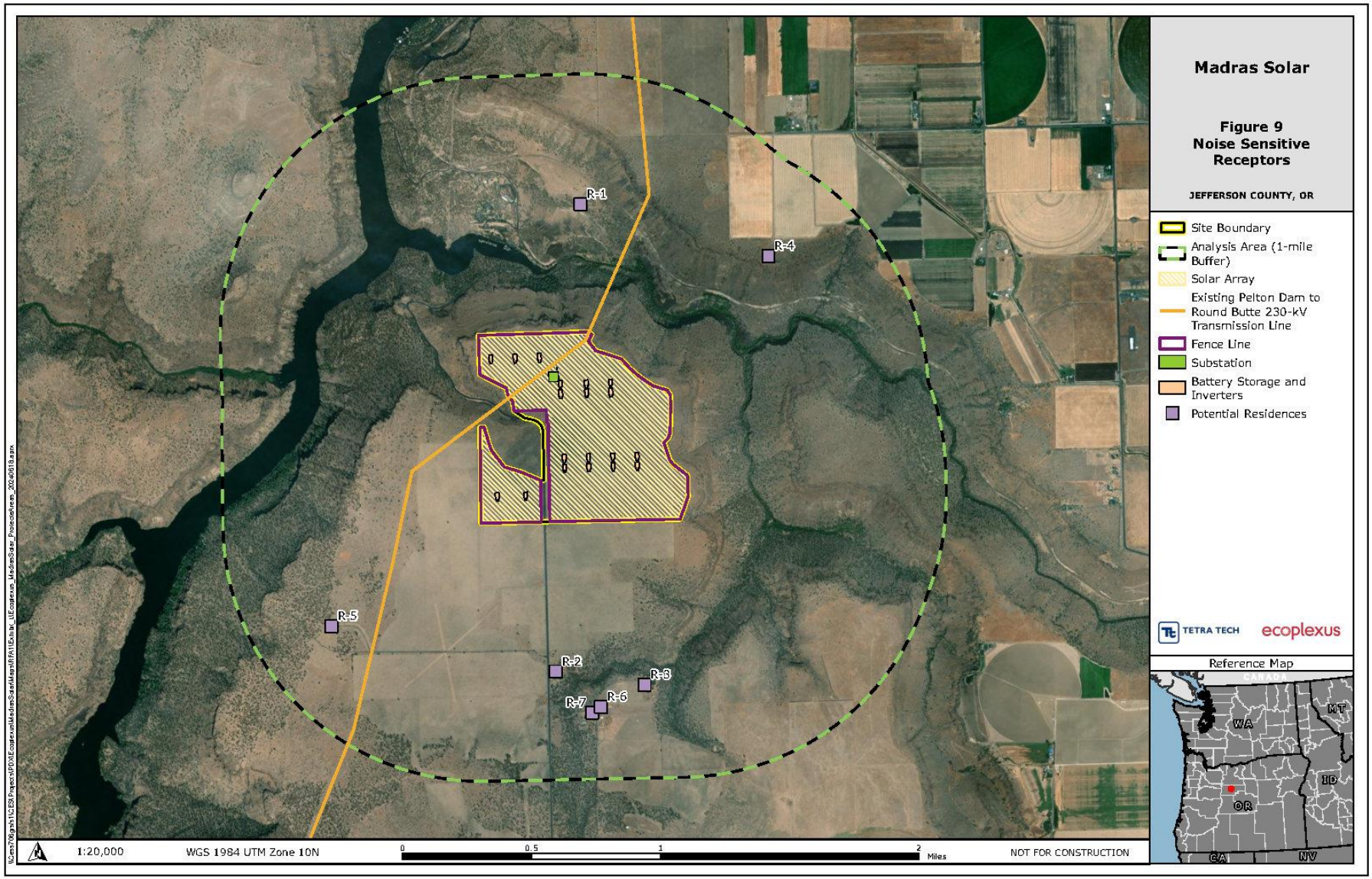
IV.A.1. Findings of Fact

The area that is evaluated for compliance with the DEQ noise regulation includes the area within and extending one-mile from the site boundary.

The certificate holder evaluated the presence of any new noise sensitive residents (NSRs) by using the Jefferson County GIS Public Mapping Application to review tax lots within one mile of the site boundary. The mapping application provides both aerial photography and the County Assessor's detailed property assessment for each tax lot including the real market value of improvements made to the property. No new improvements were identified within 1 mile of the facility site boundary, as illustrated in Figure 7 below.

[109] OAR 345-035-0035, effective November 2, 2017, as amended by minor corrections filed on November 8, 2017 and April 2, 2018.

Figure 7: RFA1 Review of Noise Sensitive Receptors Within 1 Mile of Site Boundary



The certificate holder is not proposing any changes to previously approved noise generating equipment (inverters, transformers, battery units, etc.), which are listed in Table 1 of this order and in Attachment A Draft First Amended Site Certificate. Therefore, the modeled noise from the facility would not change from what Council approved in the *Final Order on ASC*.[110] A summary of Council's previous conclusions and site certificate conditions is provided below.

Potential Noise Impacts

Operational noise would be from equipment: inverters, inverter transformers, substation transformer and battery storage equipment. To confirm compliance with the DEQ Noise Regulations, Council approved the methodologies the certificate holder used to determine the ambient noise environment and noise modeling by selecting two noise sensitive properties as representative measurement points (R-3 and R-4).[111]

Table 9: Summary of Ambient Noise Measurement Results at NSRs

NSR ID	Distance to Facility	Time Period	Baseline Sound Level		
			L1	L10	L50
R-3	Approx. ½ mile	Day	37-62	28-55	23-47
		Night	25-52	22-43	20-28
R-4	Approx. ½ mile	Day	41-61	27-56	22-50
		Night	26-55	22-43	19-36
Source: ASC Exhibit X Tables A-1 and A-2					

As presented in Table 9 above, ambient conditions during nighttime L50 (quietest time period) as measured at the representative noise sensitive properties range from 23-47 dBA and from 19 to 36 dBA.

Operational noise from the facility is compared to the maximum allowable noise limits (OAR 340-035-0035, Table 8), the most restrictive of which is 50 dBA at night. The predicted full load sound level attributable to facility operations at the closest residence, R-2, is 29 dBA with the battery storage, which is below the maximum allowable noise limit.

As described in the *Final Order on ASC*, the quietest single nighttime (10:00 p.m. to 7:00 a.m.) L50 monitoring result was 19 dBA at R-4. The quietest <u>average</u> nighttime L50 monitoring results, or the values representative of the ambient statistical noise levels, were 23 dBA at R-3 and 24 dBA at R-4. Given that the highest predicted L50 sound level at the closest residence (albeit R2, which is a different residence than those at which ambient monitoring was

[110] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, pp. 195-203.

[111] As described in the *Final Order on ASC*, the acoustic noise environment, including proximate noise sources, topography and land cover, of R-3 and R-4 is substantially similar or more conservative (e.g., includes less vegetative cover/screening) as the other noise sensitive property locations. MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, page 200.

conducted) is 29 dBA, Council found that noise generated during facility operation is expected to comply with the 10-dBA ambient degradation standard.

In the Final Order on ASC, the Council adopted Noise Control Condition 1, requiring the certificate holder to submit a noise summary report to the Department based on final facility design, equipment and components in dBA terms showing that the facility will meet the operational noise limits and falls within the range approved by Council. Council also imposed Noise Control Condition 2 to require that the certificate holder establish a noise complaint program for the public prior to facility construction. For these reasons, the Department recommends that Council continue to find that the facility, with proposed RFA1 changes, continues to comply with the DEQ Noise Regulations.

IV.A.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above, the Department recommends the Council find that the facility, with proposed RFA1 changes, will comply with the applicable Noise Control Regulations in OAR 340-035-0035.

IV.B. Removal-Fill

The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50 cubic yards or more of material is removed, filled, or altered within any "waters of the state."[112] The Council, in consultation with DSL, must determine whether a removal-fill permit is needed and if so, whether a removal-fill permit should be issued. The analysis area for wetlands and other waters of the state is the area within the site boundary.

IV.B.1. Findings of Fact

The certificate holder assessed the 284-acre site boundary for wetlands and waters of the state to determine if a removal fill permit was required in Exhibit J of the ASC. No wetlands or waters of the state were identified in that assessment conducted in 2018 and submitted to DSL for review and concurrence.[113] DSL issued its concurrence which was issued in March 2019 (WD #2018-0671). A copy of DSL concurrence was submitted with the ASC.[114]

RFA1 does not propose any changes to the site boundary or facility design that would change those previous findings. Based on the delineation and DSL concurrence, Council found in the *Final Order of the ASC*, that no removal-fill permit would be required for the facility. Because RFA1 proposes no changes, and no changes to standards or methods for delineation have been

[112] ORS 196.800(15) defines "Waters of this state." The term includes wetlands and certain other waterbodies.
[113] MSEFAPPDoc1-10_Exhibit_J_Wetlands 2020-11-09, Attachment J-1.
[114] MSEFAPPDoc1-10_Exhibit_J_Wetlands 2020-11-09, Attachment J-2.

made since Council's prior evaluation, the Department recommends that Council continue to find that the facility will not require a removal fill permit.

IV.B.2. Conclusions of Law

Based on the foregoing analysis, the Department recommends the Council continue to find that the facility will not require a removal-fill permit.

IV.C. Water Rights

Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources Department (OWRD) administers water rights for appropriation and use of the water resources of the state. Under OAR 345-022-0000(1)(b), the Council must determine whether the facility, with proposed changes, would comply with the statutes and administrative rules identified in the project order. The project order identifies OAR 690, Divisions 310 and 380 (OWRD permitting requirements) as the administrative rules governing use of water resources and water rights as applicable to the facility.

IV.C.1. Findings of Fact

As summarized in Section III.M., *Public Services*, of this order, the construction deadline extension proposed in RFA1 does not change the estimated amount of water usage or the water service provider (Deschutes Valley Water District) for facility construction. Water would be provided by the District under its municipal or quasi-municipal water permit or water right permit numbers S26113 and S36515.[115] Because RFA1 proposes no changes to water needs, usage or sources, the Department recommends that Council rely on its previous findings that a groundwater permit, surface water permit, or water right transfer is not required.

IV.C.2. Conclusions of Law

Based on the foregoing analysis, the Department recommends Council continue to find that the facility does not need a groundwater permit, surface water permit, or water right transfer.

[115] MSEFAPPDoc4-1 Final Order (SIGNED) with Attachments 2021-08-02, Section IV.Q. Water Rights

V. PROPOSED CONCLUSIONS AND ORDER

Based on the recommended findings of fact and conclusions of law included in this Order, under OAR 345-027-0375, the Department recommends Council find that the preponderance of evidence on the record supports the following conclusions~~make the following findings~~:

1. The facility, with the proposed changes, complies with the requirements of the Energy Facility Siting Statutes ORS 469.300 to 469.520.

2. The facility, with proposed changes, complies with all applicable standards adopted by Council pursuant to ORS 469.501, in effect on the date Council issues its Final Order.

3. The facility, with proposed changes, complies with all other Oregon statutes and administrative rules identified in effect on the date Council issues its Final Order.

Accordingly, the Department recommends Council find that the facility, with the proposed changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-0375. ~~The Department recommends that the Council find, based on a preponderance of the evidence on the record, that the site certificate may be amended as requested.~~

The Department therefore recommends that the Council approve Request for Amendment ~~X~~ 1 of the Site Certificate for the Madras Solar Energy Facility, and issue the 1st Amended Site Certificate included as Attachment A to this Order.

Issued ~~October 18, 2024~~January 30, 2025

OREGON DEPARTMENT OF ENERGY

Todd Cornett

Todd Cornett (Jan 30, 2025 11:28 PST)

Todd Cornett, Assistant Director for Siting

ATTACHMENTS

Attachment A: Draft First Amended Site Certificate
Attachment B: ~~Placeholder for~~ DPO Comments ~~and Responses EFSC Meeting – Adopted by Council to include EFSC Deliberation~~
Attachment B-2: Certificate Holder's Responses to Comments
Attachment C: Reviewing Agency Consultation and Documents Referenced in Order
Attachment D: Draft Habitat Mitigation Plan
Attachment E: Draft Noxious Weed Control Plan
Attachment F-1: Draft Construction Wildfire Mitigation Plan
Attachment F-2: Draft Operational Wildfire Mitigation Plan
Attachment G: Updated Decommissioning Cost Estimate and Assumptions

Attachment A: Draft First Amended Site Certificate

ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

First Amended Site Certificate for the Madras Solar Energy Facility

ISSUANCE DATES

Site Certificate **June 25, 2021**
First Amended Site Certificate **TBD**

DRAFT

Proposed Order is a track-changes version:
RED underline and ~~strikethrough~~ represent recommended changes from Draft Proposed Order (DPO) to Proposed Order
BLACK underline and ~~strikethrough~~ represent site certificate conditions changes presented in the DPO

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Table of Contents

1.0 Introduction and Site Certification 21
2.0 Facility Location and Site Boundary 43
3.0 Facility Description 0
4.0 Facility Development 6
4.1 Construction 6
4.2 Operations and Maintenance 6
4.3 Retirement 7
5.0 Site Certificate Conditions 7
5.1 Condition Format 7
5.2 General (GEN) Conditions: Design, Construction and Operations 9
5.3 Pre-Construction (PRE) Conditions 2223
5.4 Construction (CON) Conditions 26
5.5 Pre-Operational (PRO) Conditions 27
5.6 Operational (OPR) Conditions 27
5.7 Retirement (RET) Conditions 28
6.0 Successors and Assigns 30
7.0 Severability and Construction 30
8.0 Execution 30

Attachments

Attachment A Facility Location Mapsets (ASC Exhibit C)

1.0 Introduction and Site Certification

This site certificate is a binding agreement between the State of Oregon (State), acting through the Energy Facility Siting Council (Council), and Madras PV1, LLC, (certificate holder) which is a wholly owned subsidiary of Ecoplexus Inc. (certificate holder owner, parent company). As authorized under Oregon Revised Statute (ORS) Chapter 469, the Council issues this site certificate authorizing the certificate holder to construct, operate, and retire the Madras Solar Energy Facility (facility) within the below described approved site boundary in Jefferson County, subject to the conditions set forth herein.

Both the State and certificate holder must abide by local ordinances, state law, and the rules of the Council in effect on the date this site certificate is executed. However, upon a clear showing of a significant threat to public health, safety, or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules (ORS 469.401(2)).

In order to issue this site certificate, the Council determined that the preponderance of the evidence on the record supports the conclusion that the facility complies with the applicable standards adopted by the Council pursuant to ORS 469.501. (ORS 469.503(1)). The Council determined that the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of this site certificate for the approved facility. If, in its review of an application, compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the Council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute. (ORS 469.503(3)). Further, the Council determined that the facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission under ORS 469.503(4), and that the facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals under ORS 469.504(b).

As part of the EFSC review and decision process, in making the determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency occurs during the notice of intent and site certificate application process. (ORS 469.505(1)). Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503(3) and 469.504, the Council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in conflicting conditions regarding potential conflict resolution. (ORS 469.505(2)).

The findings of fact, reasoning, and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's *Final Order on the Application for Site Certificate for the Madras Solar Energy Facility* issued on June 25, 2021 (hereafter, *Final Order on the ASC*), and (b) the Council's *Final Order on Request for Amendment 1 of the Madras Solar Energy Facility*.

In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) *Final Order on Request for Amendment 1 of the Madras Solar Energy Facility Site Certificate* issued on [TBD] , (2) Final Order on the Application for Site Certificate issued on [TBD], and (3) the record of the proceedings that led to the above referenced orders.

This site certificate binds the State and all counties, cities and political subdivisions in Oregon as to the approval of the site and the construction, operation, and retirement of the facility as to matters that are addressed in and governed by this site certificate (ORS 469.401(3)). This site certificate does not address, and is not binding with respect to, matters that are not included in and governed by this site certificate, and such matters include, but are not limited to: employee health and safety; building code compliance; wage and hour or other labor regulations; local government fees and charges; other design or operational issues that do not relate to siting the facility (ORS 469.401(4)); and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council (ORS 469.503(3)).

Each affected state agency, county, city, and political subdivision in Oregon with authority to issue a permit, license, or other approval addressed in or governed by this site certificate, shall upon submission of the proper application and payment of the proper fees, but without hearings or other proceedings, issue such permit, license or other approval subject only to conditions set forth in this site certificate. In addition, each state agency or local government agency that issues a permit, license or other approval for this facility shall continue to exercise enforcement authority over such permit, license or other approval (ORS 469.401(3)). For those permits, licenses, or other approvals addressed in and governed by this site certificate, the certificate holder shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules (ORS 469.401(2)).

The certificate holder must construct, operate, and retire the facility in accordance with all applicable rules as provided for in Oregon Administrative Rule (OAR) Chapter 345, Division 26. After issuance of this site certificate, the Council shall have continuing authority over the site and may inspect or direct the Oregon Department of Energy (Department) to inspect or request another state agency or local government to inspect the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate (ORS 469.430).

The obligation of the certificate holder to report information to the Department or the Council under the conditions listed in this site certificate is subject to the provisions of ORS 192.502 *et seq.* and ORS 469.560. To the extent permitted by law, the Department and the Council will not publicly disclose information that may be exempt from public disclosure if the certificate holder has clearly labeled such information and stated the basis for the exemption at the time of submitting the information to the Department or the Council. If the Council or the Department receives a request for the disclosure of the information, the Council or the Department, as appropriate, will make a reasonable attempt to notify the certificate holder and will refer the matter to the Attorney General for a determination of whether the exemption is applicable, pursuant to ORS 192.450.

The Council recognizes that many specific tasks related to the design, construction, operation and retirement of the facility will be undertaken by the certificate holder's agents or contractors. Nevertheless, the certificate holder is responsible for ensuring compliance with all provisions of the site certificate.

The duration of this site certificate shall be the life of the facility, subject to termination pursuant to OAR 345-027-0013 or the rules in effect on the date that termination is sought, or revocation under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. The Council shall not change the conditions of this site certificate except as provided for in OAR Chapter 345, Division 27.

The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this site certificate, except where otherwise stated, or where the context clearly indicates otherwise.

2.0 Facility Location and Site Boundary

The approved facility site is located within Jefferson County, Oregon, approximately 5.5 miles west of the City of Madras, as presented in ~~Figure 1~~Attachment A: *Facility ~~Regional~~ Location Maps*. The facility site is located east of Lake Simtustus, south and west of Willow Creek, and approximately 0.5 miles from the eastern boundary of the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO).

The approved site boundary includes approximately 284 acres of private land on which the applicant has negotiated an exclusive, long-term option to lease. As defined in OAR 345-001-0010, "site boundary" means the perimeter of the site of a proposed energy facility and its related or supporting facilities, all temporary laydown and staging areas and all corridors proposed by the applicant; "site" means all land upon which an energy facility and its related or supporting facilities is located or proposed to be located.[1] After Council approves a Final Order on an application for site certificate and issues a site certificate, the "proposed facility" becomes the approved facility or facility.

[1] ORS 469.300(25)

A micrositing corridor, by definition, means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.[2] Micrositing corridors or areas are intended to allow some flexibility in specific component locations and design in response to site-specific conditions and engineering requirements to be determined prior to construction. The approved site boundary is considered a "micrositing area." ~~with temporary and permanent disturbance within the site boundary to~~ of ~~approximately 7 and 277 acres, respectively~~.

[2] OAR 345-001-0010(32)

3.0 Facility Description

Specifications and details of the approved facility, including related or supporting facilities, are presented in Table 1 below.

Table 1: Facility Component Summary

Component and Design Standard	No.	Unit
Site Boundary		
Site Boundary	284	acres
Micrositing Area	284	acres
Maximum Area within Fenceline	270.18	acres
Solar Components		
PV Solar Modules		
Approx. total number	137,673	modules
Max Height at full-tilt	8-10	feet
Posts		
Approx. total number (assumes ballasted design for foundations)	114,000	posts
Cabling		
Combiner Boxes	274	each
Inverter Step Up Transformer Units (Power Conversion Station – PCS)		
Approx. total number	19	each
Noise level	92	dBA
Transformer oil-containing capacity	550	Gallons/each
Related or Supporting Facility Components		
34.5 kilovolt (kV) Collection System[1]		
Collector line length with Cable Tray	4	miles
Collector Substations		
Substations w SCADA; Generator step-up transformers, each	1	each
Site size (approx.)	1	acre
Transformer oil-containing capacity	8,000	gallons/each
Transformer noise level	86	dBA
Max height of structures	34	feet
Switching Station (POI)		
Stations; transformers, each	1	each
Site size (with foundation and graveled areas)	0.06	acres
230 kV Transmission Line		
Length (total; northern line; southern line)	200	feet
Structures: Type (H frame); quantity	4	each
Height of structures	80	feet
Battery Energy Storage System (Lithium-ion/Zinc)		
Zinc		

Table 1: Facility Component Summary

Component and Design Standard	No.	Unit
Approx. total batteries/containers on foundations with fans/heating systems; SCADA	120	each
Site size	0.088	acres
Approx. container dimensions	9.5 x 8 x 40	H x W x L; feet
Noise level (broadband)	87	dBA
Lithium-ion		
Approx. total batteries/containers on foundations with HVAC and fire suppression systems; SCADA	120	each
Site size	0.088	acres
Approx. container dimensions	9.5 x 8 x 40	H x W x L; feet
Noise level (broadband)	87	dBA
O&M Building		
Quantity	1	each
Site size	320	Sq. ft.
Height	8.5	feet
Appurtenances	Portable toilets, fencing	
Facility Roads		
Length (main access roads/service roads)	5,000	feet
Width (main access/service)	24/16-20	feet
Perimeter Fence		
Length	23,306	miles
Height	6-8	feet
Access/gates	3	each
Temporary Concrete Batch Plant		
Quantity	1	each
Temporary Construction Areas		
Quantity	1	each
Site size	6.77	acres
Description	Graveled	

Acronyms: dBA = A-weighted decibels; HVAC = heating, ventilation and air conditioning; kV = kilovolt; OH = overhead; O&M = operations and maintenance; SCADA = supervisory, control and data acquisition

Notes:

1. The electrical collection system, or portions thereof, may be aboveground. If aboveground, there would be up to 50 wood monopoles. Disturbance would be greater from underground system, which is represented in the table above.

The approved energy facility is comprised of up to 60 module blocks (crystalline silicon modules) which include tracker system/racks, ballasted posts (approx. ~~30~~114,000 steel posts)

and related electrical equipment (cabling; inverters and transformer; and switchgear).[3] The solar array is enclosed with an up to 8-foot (height), chain-link perimeter fence.[4]

The tracking system consists of metal table frames or "racks" with a rotating drive gear that could rotate up to 60 degrees in an east to west direction such that the modules track the sun throughout the day in order to increase solar production. The modules are approximately 4 to 5 feet off the ground when fully stowed. When fully rotated, the highest point of the module would be approximately 8 to 10 feet off the ground, while the minimum distance to the ground when fully rotated would range from 1 to 2 feet.

Each tracker table is bolted to steel posts driven into the ground to serve as the foundation. The post depths vary depending on soil conditions but are typically driven to a depth of at least 8 feet below the surface. The facility is approved to install approximately 1,000 posts module block, with a maximum of approximately ~~30~~114,000 posts for the facility at full build-out. Post locations are determined by the ground-coverage ratio (GCR), which is the ratio of the area of the modules to the total area. The GCR for the facility is approximately 39 percent. A ballasted design may be used in portions of the site featuring significant subsurface rock formations, which involves mounting the tracker tables on foundations embedded in concrete blocks (ballasts) that would rest on the surface of the ground rather than on posts driven into the ground.

Electrical cables connecting the modules to each other are mounted to the back of the modules using cable trays or wire harnesses. Several rows of modules are then collected in a combiner box located at the end of one of the rows. Other electrical cables within arrays are buried to a depth of at least 3 feet.

The direct current output from the modules is combined in parallel in combiner boxes and, from the combiner boxes, then it's converted into alternating current via the inverters, the output of which is fed into transformers that step up in voltage to 34.5 kilovolt (kV). The inverters and transformers are mounted on a concrete pad measuring approximately 20 by 40 feet, with a maximum height of approximately 10 feet (including the inverters and transformers). The combination of the inverters and transformers is referred to as a power conversion station (PCS), with an approved total of 19 PCSs. Each PCS is located within the interior of the arrays. Each tracker column is equipped with on-board batteries that act as a backup power source to rotate the tracker units into the stowed position during high wind events and a loss of the primary 230 kV connection to the electrical grid. The transformers then convey the power via 34.5 kV underground collector lines to the switchgear, which consists of an industry standard electrical protection device that controls, protects, and isolates electrical equipment. The metal-clad switch gear enclosures typically measure approximately 33 feet long

[3] Ballasted design may be required given soil conditions at the site, where tracking table posts would mounted on foundations embedded in concrete blocks.

[4] The approved security fence is approved to ~~will~~either be 6 feet tall with two strands of barbed wire, or 8 feet tall with no barbed wire.

by 12 feet wide and 11 feet high.

Related or Supporting Facilities

Approved related or supporting facilities, described further below, include:

- 34.5 kV electrical collector lines
- Substation
- Point of interconnection switching station
- 230 kV transmission line
- Operations and maintenance enclosure
- Security fencing and gates
- Service roads
- Temporary construction areas
- Battery storage system

34.5 kV Electrical Collector Lines

The facility includes approximately 4 miles of belowground, with portions that may be above ground with collector trays of 34.5 kV collector lines that carry power from the switchgear to the approved substation. The 34.5 kV collector lines that are underground~~, and~~ are buried at a depth of approximately 3 feet.

Substation

The facility includes one substation, on approximately 2 acres. The substation includes incoming 34.5 kV feeder breakers; a main step-up transformer (from 34.5 to 230 kV); control enclosure; dead-end and shield pole; support steel; auxiliary station service transformer; circuit breaker; and a motor-operated disconnect switch. Components within the substation range up to 10 feet in height. The main step-up transformer contains up to 8,000 gallons of mineral oil and is located within an appropriate secondary spill containment system. The auxiliary station service transformer contains environmentally acceptable ester oil and therefore does not require secondary containment; however, this is located on a concrete pad.

Point of Interconnection Switching Station

The approved point of interconnection (POI) switching station consists of a control house; circuit breaker; circuit switcher; metering, communications, protection and control; protection and control panel; and Supervisory Control and Data Acquisition (SCADA) and metering equipment. The switching station features a three-breaker, ring-bus configuration.[5]

[5] In ASC Exhibit B, the applicant represents that the POI switching station would likely be owned by Portland General Electric Company (PGE), nonetheless it is represented as a related or supporting facility to the energy facility and therefore the applicant bears responsibility of all applicable compliance requirements.

230 kV Transmission Line

The 230 kV transmission line extends approximately 200 feet within the approved site boundary and connects the Point of Interconnect to PGE's existing Pelton Dam to Round Butte 230 kV transmission line. The 230 kV transmission line is approved to use up to 4, 80-foot H-frame poles, each placed in concrete foundations approximately 12 feet deep and 4 feet in diameter.

Operations and Maintenance Enclosure

The O&M enclosure consists of a single, 8.5-foot-tall, 320-square-foot dry-storage shed located within the approved site boundary. Restroom facilities are provided in the form of temporary portable toilets, while any required water is trucked in from offsite sources. Approximately 10 gallons of sanitary wastewater is generated per day and is collected and transported offsite for treatment. Electric power and telephone are provided via local service providers.

The approved O&M enclosure would contain basic firefighting equipment for use onsite during maintenance activities, including shovels, beaters, portable water for hand sprayers, fire extinguishers and other equipment.

Security Fencing and Gates

The facility includes a perimeter security fence, consisting of chain-link or notch-style fencing. The security fence is approved to be either 6 feet tall with two strands of barbed wire, or 8 feet tall with no barbed wire. The security fence features gated access at several points.

The fenced perimeter includes a clearance area between the fence and facility equipment to ensure noncombustible, defensible space.

Site Access and Service Roads

The facility has three main points of access from SW Elk Drive for construction and operation as shown on the conceptual site plan (see ASC Exhibit C Figures C-2A and C-2B). Two points of access are 20-foot-wide gravel access road segments into the southern end of the facility site. One of these access points extends into the portion of the facility west of SW Elk Drive and the other extends into the southern end of the facility east of SW Elk Drive. The graveled entrance/exit point west of SW Elk Drive ends within the facility site after approximately 120 feet and the graveled entrance/exit point east of SW Elk Drive ends within the facility site after approximately 140 feet. At the end of the access road segments, internal circulation is via the 16- to 20-foot-wide clear spaces between the rows of solar modules. The main access road providing access to the construction staging and laydown area, O&M enclosure, facility substation, point of interconnection and northern end of the facility site is a 24-foot-wide graveled road extending east from SW Elk Drive (see ASC Exhibit C Figures C-2A and C-2B) for

approximately 960 feet before ending at the facility substation.

Temporary Construction Areas

Temporary construction areas are located within the approved site boundary. The temporary construction areas are used for equipment staging, parking and construction trailer. The temporary parking area is graveled.

Temporary Concrete Batch Plant

The facility may include a temporary concrete batch plant, for aggregate storage and concrete preparation for foundations. Any rock would be obtained from existing, permitted quarries, and may be crushed at the quarry or onsite, as needed. The projected maximum annual cubic yards of concrete to be produced would range from 5,000 to 25,000 cubic yards per year. The applicant would obtain a Basic Air Contaminant Discharge Permit (ACDP), a federally-delegated permit, from the Oregon Department of Environmental Quality (DEQ), if a batch plant is needed at the site to support construction activities. The temporary concrete batch plant would be removed from the site prior to commercial facility operation.

Battery Storage System

The battery storage system is approved to use either Lithium-ion or flow battery technology, and includes the following elements:

- Battery Storage Equipment (including batteries, racks, direct current (DC)-DC converters, and DC switchboards),
- Balance of Plant Equipment (low-voltage electrical systems; fire suppression; heating, ventilation, and air conditioning systems; building auxiliary electrical systems; and network/SCADA systems),
- Cooling System (separate chiller or condenser unit located outside the battery racks with chillers, pumps and heat exchangers),
- Standard-sized shipping containers, approximately 8 feet wide by 40 feet long by 9.5 feet high on a concrete slab. Each container would hold the batteries, SCADA system, cooling system, if needed, and a fire suppression system.

Both the approved Lithium-ion and flow batteries are placed inside standard-sized shipping containers (8 feet wide, 40 feet long, 9.5 feet high), which would be located atop a concrete slab. Each container holds batteries, a SCADA system, a cooling system (if needed), and a fire suppression system.

If the approved Lithium-ion batteries are selected, the fire suppression system includes internal Stat-X 1500E aerosol fire suppression units inside each battery storage container, connected to a photo/heat detector. The battery storage system is designed to comply with the most current adopted version of the National Fire Protection Association's (NFPA) 855 Standard for the

Installation of Stationary Energy Storage Systems.

4.0 Facility Development

4.1 Construction

Facility construction is anticipated to take 9-months. Construction activities would employ an average of 100 people and a maximum of 200 people during peak summer months. The facility is approved to be constructed in phases. In accordance with ORS 469.300(6), preconstruction conditions, if specified, may be satisfied for the applicable phase, facility component or for the facility, as applicable, based on final design and configuration. The approved construction phasing may occur in phases including: clearing (between September 1 and March 1 to the greatest extent feasible to avoid impacts on wildlife), excavation, foundation, erection and finishing. During foundation work, the applicant may utilize a temporary concrete batch plant, with a maximum production of 5,000 to 25,000 cubic yards, and is limited as temporary use at the site to no more than 6-months within any 12-month period.

Separate contractors may be hired for road and solar array foundation construction, electrical substation construction, solar module installation, and array connection and commissioning. Subsequently, construction is approved to be phased based on activity, facility component and/or construction contractor schedule.

The facility may be constructed in phases. In accordance with ORS 469.300(6), preconstruction conditions, if specified, may be satisfied for the applicable phase, facility component or for the facility, as applicable, based on final design and configuration.

4.2 Operations and Maintenance

Facility operation includes remote monitoring and does not include any full-time operations and maintenance (O&M) staff. The facility O&M activities would include routine, monthly inspections of the battery storage systems, unless otherwise recommended by the manufacturer.

O&M activities include replacement of electrolyte solutions every 10 to 20 years, if flow batteries are selected. If lithium-ion batteries are selected, O&M activities include battery replacement every 5 to 10 years. Nonfunctional solar panels would be recycled through the Solar Energy Industries Association (SEIA) National PV Recycling Program, to the maximum extent feasible.

O&M activities may include washing of solar modules. It is conservatively assumed that solar modules would be washed twice a year, which would require approximately 1,650,000 gallons of water per year. A third-party contractor would obtain water for panel cleaning from an offsite source. Water would then be applied via a tanker truck and would not have any cleaning solvents in it, unless otherwise approved by the Department. Washwater would be discharged

by evaporation and seepage into the ground.

4.3 Retirement

Facility retirement includes disassembling the solar modules and electrical equipment and wires, and related electrical equipment including large transformers and battery components. Disassembly would use conventional construction equipment with the objective of maximizing the recycling of materials and minimizing the amount of disposed waste.

Disassembling the solar modules would involve removing the solar panels from their trackers, removing the steel trackers from their posts, and extracting the steel posts. The solar modules would be directly loaded onto recycler trucks and hauled off site, while the steel trackers and posts would be stockpiled and staged onsite awaiting loading by a recycler. Concrete equipment foundations and underground cables would be removed to a minimum depth of 3 feet below grade, and then disposed of at the Jefferson County Transfer Station (JCTS). Both the perimeter fencing and gravel (placed on access road segments and in the substation and laydown areas) would be removed but would also be kept onsite until the material could be loaded by a recycler. The approved facility site would then be restored through minimal grading and revegetation with plants or seed mix consistent with the Noxious Weed Plan (Attachment G of this order) or landowner interests.

5.0 Site Certificate Conditions

5.1 Condition Format

The conditions in Sections 5.2 through 5.7 of this Site Certificate are organized and coded to indicate the phase of implementation, the standard the condition is required to satisfy, and an identification number (1, 2, 3, etc.).[6] The table below presents a "key" for phase of implementation:

Key	Type of Conditions/Phase of Implementation
GEN	General Conditions: Design, Construction and Operation
PRE	Pre-Construction Conditions
CON	Construction Conditions
PRO	Pre-Operational Conditions
OPR	Operational Conditions
RET	Retirement Conditions

[6] The identification number is not representative of an order that conditions must be implemented; it is intended only to represent a numerical value for identifying the condition.

Some conditions are coded for more than one phase of implementation.

The standards are presented using an acronym; for example, the General Standard of Review is represented in the condition numbering as “GS”; the Soil Protection standard is represented in the condition numbering as “SP” and so forth.

For example, the coding of Condition GEN-GS-01 represents that the condition is a general condition (GEN) to be implemented during design, construction and operation of the facility, is required to satisfy the Council’s General Standard of Review and is condition number 1. The condition language also includes in brackets [ ] the name of the condition as imposed in the Final Order on the Application (i.e. General Standard of Review Condition 1).

5.2 General (GEN) Conditions: Design, Construction and Operations

Condition Number	General (GEN) Conditions
STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]	
GEN-GS-01	The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate. a. Construction of the facility or facility component(s) shall commence ~~within three years after the date of Council action~~ by June 25, ~~2024~~2027]. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline by satisfying applicable preconstruction conditions and completing at least $250,000 work at the site. b. Construction of the facility shall be completed within 18-months after the construction commencement date. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline. [General Standard of Review Condition 1, Mandatory Condition OAR 345-025-0006(4), Final Order on ASC, AMD1]
GEN-GS-02	The certificate holder shall submit a legal description of the site to the Oregon Department of Energy within 90 days after beginning operation of the facility or any phase of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility. [General Standard of Review Condition 2, Mandatory Condition OAR 345-025-0006(2), Final Order on ASC]
GEN-GS-03	The certificate holder shall design, construct, operate and retire the facility substantially as described in the site certificate: a. Use or occupation of land by solar photovoltaic energy generation components, as described in the site certificate, not to exceed 277 permanent acres; b. In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; c. In compliance with all applicable permit requirements of other state agencies; and, d. In compliance with all applicable lawful rules and requirements of federal agencies. [General Standard of Review Condition 3, Mandatory Condition OAR 345-025-0006(3); OAR 345-026-0015(3),Final Order on ASC]

GEN-GS-04	If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility or any phase of the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions. [General Standard of Review Condition 5, Mandatory Condition OAR 345-025-0006(6), Final Order on ASC]
GEN-GS-05	Before any transfer of ownership of the facility, any phase of the facility, or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 apply to any transfer of ownership that requires a transfer of the site certificate. [General Standard of Review Condition 7, Mandatory Condition OAR 345-025-0006(15), Final Order on ASC]
GEN-GS-06	The certificate holder shall: a. Design, construct and operate the transmission line in accordance with the requirements of the National Electrical Safety Code as approved by the American National Standards Institute; and b. The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line. c. Design the battery storage system in accordance with the requirements of the National Fire Protection Association's (NFPA) 855: Standard for the Installation of Stationary Energy Storage Systems (NFPA, 2020) or most current version. [General Standard Condition 8, Site Specific Condition OAR 345-025-0010(4), Final Order on ASC]
GEN-GS-07	The certificate holder is authorized to construct a 230 kV transmission line anywhere within the approved corridor, subject to the conditions of the site certificate. The approved corridor extends approximately 200 feet in length between the facility substation and the Point of Interconnect, and 0.5-of-a-mile in width. [General Standard Condition 9, Site Specific Condition OAR 345-025-0010(5), Final Order on ASC]
GEN-GS-08	The certificate holder shall: a. Within six months after beginning construction, and every six months thereafter during construction, submit a semiannual construction progress report to the Department. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall report on the progress of construction and shall address the subjects listed in (b). When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule. b. After January 1 but no later than April 30 of each year after beginning operation of the facility, the certificate holder shall submit an annual report to the Department addressing the following for the calendar year preceding the date of the report:

	i. Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility. ii. Reliability and Efficiency of Power Production: For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems. iii. Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period. iv. Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes. v. Compliance Report: A report describing the certificate holder's compliance with all site certificate conditions that are applicable during the reporting period. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate. vi. Facility Modification Report: A summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the site certificate in accordance with OAR 345-027-0350. [General Standard Condition 11, OAR 345-026-0080, Final Order on ASC]
STANDARD: ORGANIZATIONAL EXPERTISE (OE) [OAR 345-022-0010]	
GEN-OE-01	The certificate holder shall report to the Department, within 7 days, any material change in the control, financial condition, governance, or management of the certificate holder's parent company, including any change that may affect the certificate holder's access to resources, expertise, or personnel relied upon for the construction, operation and retirement of the facility. The certificate holder shall provide sufficient information for the Department to evaluate whether the material changes could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard (specifically Organizational Expertise and Retirement and Financial Assurance Standards).

	[Organizational Expertise Condition 1, Final Order on ASC]
GEN-OE-02	Before beginning construction of the facility or a facility component, as applicable, the certificate holder shall provide to the Department documentation that work contracts include provisions requiring that all construction contractors and subcontractors comply with all applicable laws and regulations and with the terms and conditions of the site certificate. Such contractual provisions shall not operate to relieve the certificate holder of responsibility under the site certificate. [Organizational Expertise Condition 3, Final Order on ASC]
GEN-OE-03	The certificate holder shall notify the Department with 72 hours of any occurrence involving the facility if: a. There is an attempt by anyone to interfere with its safe operation. b. There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion. c. There is any fatal injury at the facility. [Organizational Expertise Condition 4, Final Order on ASC, OAR 345-026-0170]
GEN-OE-04	The certificate holder shall, as soon as reasonably possible: a. Report incidents or circumstances that may violate the terms or conditions of the site certificate, terms or conditions of any order of the Council, or the terms or conditions of any order issued under OAR 345-027-0230, to the Department . In the report to the Department, the certificate holder shall provide all pertinent facts including an estimate of how long the conditions or circumstances existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit; b. Initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence; c. Submit a written report within 30 days of discovery to the Department. The report must contain: i. A discussion of the cause of the reported conditions or circumstances; ii. The date of discovery of the conditions or circumstances by the responsible party; iii. A description of immediate actions taken to correct the reported conditions or circumstances; iv. A description of actions taken or planned to minimize the possibility of recurrence; and v. For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported conditions or circumstances. d. Upon receipt of the written report in sub(c) of this condition, the Department may review the facility record for incidents or circumstances reported or reportable under sub(a) related to public health and safety, the environment, or other resources protected under Council standards. If these incidences are

	determined by the Department to impact the adequacy of the facility decommissioning cost, the Department or Council may adjust the contingencies identified in Final Order on RFA1 Table 5 and request that the certificate holder promptly provide an updated bond or letter of credit in the adjusted amount. [Organizational Expertise Condition 5, Final Order on ASC, AMD1]
GEN-OE-05	The certificate holder shall: a. Before beginning construction of the facility or a facility component, notify the Department of the identity, telephone number, e-mail address and qualifications of the full-time, on-site construction manager. Qualifications shall demonstrate that the construction manager has experience in managing permit and regulatory compliance requirements and is qualified to manage a utility-scale solar facility construction project. b. Before beginning operation, notify the Department of the identity, telephone number, e-mail address and qualifications of the facility/asset manager. Qualifications shall demonstrate that the operations manager has experience in managing permit and regulatory compliance requirements and is qualified to manage operation of a utility-scale solar facility. c. Before beginning facility retirement, notify the Department of the identity, telephone number, e-mail address and qualifications of the personnel or entity responsible for facility decommissioning and restoration activities. Qualifications shall demonstrate that the identified personnel have experience in managing permit and regulatory compliance requirements and are qualified to decommission a utility-scale solar facility. d. The certificate holder shall notify the Department within 72-hours upon any change in personnel or contact information provided to satisfy Condition 6(a) through (c). [Organizational Expertise Condition 6, Final Order on ASC]
GEN-OE-06	The certificate holder shall contractually require its third-party contractor used to transport and dispose battery and battery waste to comply with all applicable federal regulations and manufacturer recommendations related to the transport and handling of battery related waste. [Organizational Expertise Condition 7, Final Order on ASC]
GEN-OE-07	a. The certificate holder shall provide to the Department a list of federal, state and local permits, including any third-party permits related to facility siting; and a schedule for obtaining identified permits. b. Once obtained, certificate holder shall provide copies of all permits, including third-party permits, required for facility siting to the Department. [Organizational Expertise Condition 8, Final Order on ASC]
STANDARD: STRUCTURAL STANDARD (SS) [OAR 345-022-0020]	
GEN-SS-01	The certificate holder shall design, engineer and construct facility components based on Site Class (soils-related category) determined through the site-specific geotechnical investigation (Structural Standard Condition 1), as reviewed and approved by the Department in consultation with DOGAMI.

	[Structural Standard Condition 2, Final Order on ASC]
GEN-SS-02	The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction. [Structural Standard Condition 3, Mandatory Condition OAR 345-025-0006(12), Final Order on ASC]
GEN-SS-03	The certificate holder shall notify the Department, the State Building Codes Division and the DOGAMI promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the DOGAMI and the Building Codes Division to propose and implement corrective or mitigation actions. [Structural Standard Condition 4, Mandatory Condition OAR 345-025-0006(13), Final Order on ASC]
GEN-SS-04	The certificate holder shall notify the Department, the State Building Codes Division and the DOGAMI promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the DOGAMI and the Building Codes Division to propose and implement corrective or mitigation actions. [Structural Standard Condition 5, Mandatory Condition OAR 345-025-0006(14), Final Order on ASC]
GEN-SS-05	The certificate holder shall: a. Before beginning construction: i. Demonstrate that facility components have been setback a minimum of 30-feet from basalt rim rock areas (Hurbers Canyon) to lesson landslide hazards at the site, unless otherwise informed by the Site-Specific Geotechnical Investigation Report, as reviewed by DOGAMI. ii. Create detailed geologic hazards maps to aid in facility layout. The geologic hazard maps shall be informed by the Site-Specific Geotechnical Investigation Report, as reviewed by the Department and DOGAMI, in accordance with Structural Standard Condition 1. A copy of the map shall be provided to the Department and DOGAMI. b. During facility operation: i. Register for the United States Geologic Service Volcano Hazards Program Notification Service. ii. Develop emergency response and shut down procedures for seismic or nonseismic hazards or events and submit to the Department. [Structural Standard Condition 6, Final Order on ASC]
STANDARD: SOIL PROTECTION (SP) [OAR 345-022-0022]	

GEN-SP-01	a. Prior to construction, the certificate holder shall provide a copy to the Department of its DEQ-issued NPDES 1200-C permit, including final Erosion Sediment Control Plan and associated drawings (as provided in Attachment E of the Final Order on the ASC). b. During construction, the certificate holder shall: i. Conduct all work in compliance with a final Erosion and Sediment Control Plan as required under the NPDES 1200-C. ii. The certificate holder must provide copies of completed Erosion and Sediment Control Inspection Forms (forms) and identify any corrective actions upon request by the Department during construction inspections. c. Following completion of construction, the certificate holder shall provide to the Department DEQ verification that the NPDES 1200-C permit has been terminated, demonstrating that site stabilization has been achieved. [Soil Protection Condition 1, Final Order on ASC]
STANDARD: LAND USE (LU) [OAR 345-022-0030]	
GEN-LU-01	The certificate holder shall: a. Prior to construction, provide to the Department and Jefferson County a facility construction schedule and facility layout map, with Jefferson County's Sensitive Bird Habitat (BH) Overlay Zone for County Site 26. The schedule and map shall identify whether any facility structures, which require a building permit, are located within Jefferson County's Sensitive Bird Habitat (BH) Overlay Zone for County Site 26. If there are such structures to be located within the BH zone, activities associated with the structures must be scheduled to occur outside of the protected periods listed below: Species / Protected Period / Early Release Bald Eagle / Jan 15 - Aug. 31 / May 15 Golden Eagle / Feb. 1 - Aug. 31 / May 15 Prairie Falcon / March 1 - Aug. 30 / June 1 b. During construction of structures identified per sub(a) within the BH Zone, the certificate holder may commence activities by the early release date if, based on the certificate holder's construction monitoring logs of County Site 26 conducted during the protected period, the nest sites are deemed by the Department, in consultation with ODFW, unoccupied or have been fledged. County Site 26 monitoring conducted in order to commence work within the BH Zone shall be based on a protocol approved by the Department, in consultation with ODFW. [Land Use Condition 2, Final Order on ASC]
GEN-LU-02	The certificate holder shall design the facility in a manner that meets the following requirements: a. Any outdoor lights shall be shielded to illuminate downward. b. The outdoor light source (bulb or element) shall not be visible at or beyond the property line. [Land Use Condition 3, Final Order on ASC]

GEN-LU-03	The certificate holder shall design, and construct signage necessary for the facility or facility components in accordance with the requirements of JCZO Section 406.1(C) through (H) and 406.3. [Land Use Condition 4, Final Order on ASC]
GEN-LU-04	~~**Land Use Condition 5:**~~ In order to obtain building permits from Jefferson County (Land Use Condition 1), the certificate holder shall demonstrate to the Department and Jefferson County Planning Department that the final facility design adheres to the following requirements for any onsite buildings which have a floor, roof and at least three walls: a. All buildings shall have Underwriter's Laboratory rated Class A or B roofing or equivalent, or tile or metal roofing. b. Facility access roads shall have a surface width of at least 20 feet, with minimum carrying capacity of 75,000 pounds. If not designed by an engineer, access roads shall be constructed of a minimum of 5 compacted inches of crushed rock meeting ODOT material standards. The access roads shall be compacted until a loaded 10 cubic yard dump truck ceases to deflect the road. c. Facility access roads shall have a finished grade no greater than 10 percent unless approved by the fire chief. Grade shall not exceed 4 percent in turnarounds. Any portion of the access with a grade greater than 8 percent shall be surfaced with 1.5 inch class C asphalt mix, 0-11 oil mat, or four inch fiber mesh reinforced Portland cement concrete. d. Curves shall have a minimum centerline radius of 55 feet, including the intersection of a driveway with a public road. e. Gates shall be a minimum of 20 feet wide, and shall be of a swinging or sliding type constructed of materials that allow manual operation by one person. Electric gates shall be equipped with a Knox box purchased from the fire district. f. An address sign shall be posted at the point where a driveway leaves a road, in such a manner as to be visible to vehicles approaching from both directions. A directional address sign must also be posted at the junction where an individual driveway leaves a shared driveway. Address signs shall contain white, reflective numbers at least 3 inches in height on a green background. g. A primary fuel break shall be developed and maintained around all buildings. The fuel break shall be at least 30 feet wide, or to the property 226 line, whichever is the shortest distance. The fuel break shall be measured from the furthest extension of the structure, including attached carports, the outside edge of a deck, and the edge of roof eaves. The goal within the primary fuel break is to remove fuels that will produce flame lengths in excess of one foot. Brush, downed limbs and other dead plant material must be removed. The primary fuel break should contain primarily nonflammable ground cover such as asphalt, concrete, rock, brick, bare soil, green grass, or succulent ground cover. Combustible ground cover or plant materials, such as bark mulch or accumulated leaves and needles, are prohibited within twelve inches of buildings. Herbaceous

	plants such as groundcovers, bedding plants, bulbs and perennial flowers are permitted provided they are kept green during the fire season. Dry grass is allowed if kept less than four inches in height. Isolated groupings of deciduous ornamental shrubbery and trees, native trees or other low plants (less than 24 inches) are allowed when maintained in a green condition free of dead plant material and ladder fuels, and provided they are arranged and maintained in such a way that minimizes the possibility a fire can spread to adjacent vegetation. Healthy trees are permitted, provided they are pruned to remove branches that are dead or that are less than 10 vertical feet above the ground. A 15-foot clearance between tree limbs and stovepipes or chimney outlets must be maintained. No branches may overhang within 25 vertical feet of a roof. Areas under decks shall be kept free of firewood, stored flammable materials, leaves and needles. h. A fuel break shall be developed and maintained immediately adjacent to any driveway that is more than 150 feet in length. The fuel break shall extend at least ten feet from each side of the centerline of the driveway, or to the property line, whichever is the shortest distance. A minimum clear height of at least 14½ feet shall be maintained for the entire width of the driveway and fuel break. The driveway fuel break shall meet the same requirements as outlined in subsection (1) for ground cover and limbing of trees. [Land Use Condition 5, Final Order on ASC]
~~GEN-LU-05~~	~~Before beginning construction of the facility or a facility component, the certificate holder shall provide documentation that underlying property owners have signed and recorded in the deed records for the county:~~ ~~a. a "Waiver of Right to Remonstrate Against Accepted Farm Use Practices and the Maintenance or Construction of County Roads."~~ ~~b. Agreement by project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).~~ ~~[Land Use Condition 6, Final Order on ASC]~~
STANDARD: RETIREMENT AND FINANCIAL ASSURANCE (RT) [OAR 345-022-0050]	
GEN-RF-01	The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder. [Retirement and Financial Assurance Condition 1, Mandatory Condition OAR 345-025-0006(7), Final Order on ASC]
STANDARD: FISH AND WILDLIFE HABITAT (FW) [OAR 345-022-0060]	
~~GEN-FW-01~~	~~:~~[Deleted Final Order on RFA1] ~~The certificate holder shall:~~ ~~Before beginning construction, finalize and submit a Revegetation Plan, based upon the draft plan provided in Attachment F of the Final Order on the ASC, for review and approval by the Department, in consultation with ODFW. The scope of finalizing the plan shall, at a minimum, include the following:~~

	~~Final assessment of temporary habitat impacts (in acres), based on habitat quality of habitat subtype, and final facility design, presented in tabular format.~~ ~~Survey and sampling protocol for evaluating the success criteria of all previously disturbed wildlife habitat areas based on pre-disturbance habitat quality and diversity of habitat temporarily impacted.~~ ~~Description of topsoil salvage, scarification and restoration methods if intended to be implemented.~~ ~~Approval of appropriate seed mix composition from the ODFW.~~ ~~During construction and operation of the facility or facility component, implement the requirements of the plan; monitor and report results of revegetation activities to the Department, as required by the plan.~~ [Fish and Wildlife Condition 1, Final Order on ASC, AMD1]
GEN-FW-02	The certificate holder shall: a. Before beginning construction, finalize and submit a Noxious Weed Control Plan, based upon the draft plan provided in Attachment G of the Final Order on the ASC, for review and approval by the Department, in consultation with ODFW and Jefferson County Weed Control Authority. The finalized plan shall, at a minimum, include the results of preconstruction weed survey and updated County weed lists. b. During construction and operation, implement the requirements of the plan. [Fish and Wildlife Condition 2, Final Order on ASC]
GEN-FW-03	The certificate holder shall: a. Before beginning construction, finalize and submit a Habitat Mitigation Plan, based upon the draft plan provided in Attachment H of the Final Order on the ASC, for review and approval by the Department, in consultation with ODFW. In the finalization of the plan, the Department may request specific reporting requirements including specific information, frequency and format. Components of the plan to be finalized shall include, at a minimum, a final assessment of permanent habitat impacts (in acres) based on habitat quality of habitat subtype, and final facility design, presented in tabular format. b. Before beginning construction, select qualified specialists that have substantial experience in creating, enhancing, and protecting habitat mitigation areas within Oregon; and provide the identity and qualifications of the personnel or contractors selected to implement and manage the habitat mitigation areas to the Department. c. During Construction and operation of the facility, implement the requirements of the plan as approved under sub(a) of this condition. [Fish and Wildlife Condition 3, Final Order on ASC]
GEN-FW-04	The certificate holder shall: a. Prior to construction of the facility or facility component, hire a qualified Biologist to conduct a raptor nest survey within 0.25 miles from proposed disturbance areas. The certificate holder shall submit to the Department, in consultation with ODFW, for review and concurrence, survey protocol identifying the survey area and methods to be used to identify raptor nests.

Raptor nest surveys shall be conducted no more than two weeks prior to the start of construction activities. If the biologist detects active raptor nests, the certificate holder shall implement and maintain spatial buffers around the nests and seasonal restrictions, as presented in the table below.

ODFW Raptor Nest Buffers and Seasonal Restrictions

Species	Spatial Buffer	Seasonal Restriction	Release Date if Unoccupied
Golden eagle	0.25 mile	Feb 1- Aug 15	May 15
Bald Eagle	0.25 mile	Feb 1- Aug 15	May 15
Peregrine falcon	0.25 mile	Jan 1 – Jul 1	May 15
Ferruginous hawk	0.25 mile	Mar 15 – Aug 15	May 31
Swainson's hawk	0.25 mile	Apr 1 – Aug 15	May 31

If a nest becomes active during construction that was not identified as active during the preconstruction surveys, the certificate holder may request review by the Department, in consultation with ODFW, of an exception to the spatial buffer and seasonal restrictions.

b. During construction of the facility or facility component:
    i. Maintain approved buffers around active raptor nests
    ii. Avoid any blasting and pile-driving noise to the extent feasible during the nesting season for golden eagles (January 1 to August 1) within 0.25 mile of any occupied nest.

[Fish and Wildlife Condition 4, Final Order on ASC]

GEN-FW-05

The certificate holder shall:

a. Before beginning construction of the facility or facility component, visibly establish marked construction boundaries where construction activities may take place. The boundaries should constrain construction personnel, activity, and traffic only to areas approved by the certificate holder or construction contractor as an area deemed necessary for construction.
b. Before beginning and during construction, facility personnel and on-site contractors shall not remove existing vegetation beyond approved construction boundaries.
c. Before beginning and during construction, operation, and retirement of the facility, ensure that facility personnel and on-site contractors use existing roads to the maximum extent possible, and restrict off-road travel to only be allowed in case of emergencies.
d. Before beginning and during construction, operation, and retirement of the facility, impose and enforce a speed limit of 20 miles per hour while driving within the facility site boundary.

[Fish and Wildlife Condition 6, Final Order on ASC]

STANDARD: HISTORIC, CULTURAL, AND ARCHEOLOGICAL RESOURCES (HC) [OAR 345-022-0090]

GEN-HC-01	During construction, operations, and retirement of the facility, the certificate holder shall implement and adhere to the requirements of the Inadvertent Discovery Plan (Attachment Tribal Position Paper on the Treatment of Human Remains), substantially similar to the plan provided in Attachment I of the Final Order on ASC. [Historic, Cultural and Archeological Condition 1, Final Order on ASC]
STANDARD: PUBLIC SERVICES (PS) [OAR 345-022-0110]	
GEN-PS-01	The certificate holder shall: a. Before beginning construction of the facility, or facility component, develop a Construction Traffic Management Plan. A copy of the Construction Traffic Management Plan shall be provided to the Department and Jefferson County Public Works Department. The Construction Traffic Management Plan shall, at a minimum, include the following: i. Construction details including construction contractor contact information, site plan showing surrounding streets and haul routes, employee parking areas, and delivery and receiving areas. ii. A road conditions survey detailing the condition of NW Elk Drive, for the portion of roadway that is located within the site boundary. iii. Schedule of construction activities, including total duration and work hours. iv. Mobility impacts from maximum and average expected number of truck and worker trips to and from the site per hour and per day. v. Mitigation measures including, but not limited to: • Installation and maintenance of temporary road signage and warnings such as “Equipment on Road,” “Truck Access,” or “Road Crossings” at locations where trucks are expected to slow down or enter/exit a public roadway, in accordance with the 2019, or recent version of the ODOT Traffic Control Plans Design Manual. • Installation of advanced signage, where possible, in accordance with the 2016 or recent version of the ODOT Traffic Control Plans Design Manual. • Use of pilot cars for slow or oversize loads per Oregon Administrative Rule 734-082-0035. • Encourage and promote carpooling of the construction workforce, and potentially provide high-occupancy vans or buses to transport workers to the site. • Use flag personnel to minimize the potential for accidents during large deliveries, in accordance with the 2019, or recent version of the ODOT Traffic Control Plans Design Manual. • Restrict or limit large trucks through the US 97/SW 5th Street corridor during the morning or evening peak of commuter traffic (generally 7-9am and 3-6 pm). • At all times during construction, maintain at least one travel lane at entrance and exit points onto public roads.

	• Require third-party contractors to consult with ODOT before construction to identify roadway segments or bridges that should be restricted for construction traffic, if any, and to obtain any heavy haul permits required to allow transport of oversized loads. b. During construction of the facility, or facility component, the certificate holder shall ensure that construction contractors adhere to the requirements of the Construction Traffic Management Plan. c. Within 1 year of construction completion of the facility, the certificate holder shall demonstrate to the Jefferson County Public Works Department that the portion of NW Elk drive evaluated in the preconstruction road conditions survey has been restored to its preconstruction condition. [Public Services Condition 1, Final Order on ASC]
GEN-PS-02	The certificate holder shall: a. First, submit to and receive responses from Oregon Department of Aviation (Aviation) of 7460-1 Notice of Proposed Construction or Alteration Forms for all aboveground facility components. The certificate holder shall provide copies of Aviation responses, which must be consistent with ORS 836.535(2), to the Department, and shall respond to Aviation marking and lighting recommendations, if applicable. b. Second, once Aviation responses on the 7460-1 forms are received, submit to and receive determinations from the Federal Aviation Administration (FAA) for all aboveground facility components. The certificate holder shall provide copies of FAA determinations to the Department. c. Within 5-days of construction, certificate holder shall submit 7460-2 forms to FAA and Aviation and shall report both timing of submission and any results to the Department. [Public Services Condition 2, Final Order on ASC]
~~GEN-PS-03~~	[Deleted Final Order on RFA1] ~~The certificate holder shall:~~ ~~a. Before beginning facility construction, submit to the Department for review, an Emergency Contingency Plan developed in coordination with Jefferson County Fire District #1. The Emergency Contingency Plan shall include but be not limited to:~~ ~~i. Emergency response procedures and communication channels for the project as well as information regarding the various components of the facility based on final design and battery technology selected (if any);~~ ~~ii. Procedures for on-site training for the certificate holder, construction contractor staff and staff and volunteers from the Jefferson County Fire District #1;~~ ~~iii. Identification of the type and location for fire protection equipment, location(s) of water source(s), and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code.~~ ~~b. During facility construction and operation:~~ ~~i. Implement and adhere to the requirements of the Emergency Contingency Plan;~~

	~~ii. Participate annually in any Jefferson County Fire District #1 meetings held by the Fire District related to the facility; and~~ iii. ~~Verify and update applicable emergency contacts and emergency response procedures within the Plan.~~ [Public Services Condition 4, Final Order on ASC, AMD1]
STANDARD: WASTE MINIMIZATION (WM) [OAR 345-022-0120]	
GEN-WM-01	During construction, and operation ~~and decommissioning~~, the certificate holder shall submit to the Department, for review and approval, a Waste Management Plan that includes a materials and waste inventory (type and estimated quantity) consistent with the inventory included in ASC Exhibit G; and the Hazardous Materials Business Plan and Spill Control and Countermeasure Plan, as applicable to the battery storage system and required per Soil Protection Condition 2. The Department shall recommend additional waste minimization measures for any waste types generated onsite, as necessary. The Waste Management Plan shall identify all waste minimization measures to be implemented per material type, including but not limited to: a. Recycling steel and other metal scrap b. Recycling wood waste c. Recycling packaging wastes such as paper and cardboard d. Collecting non-recyclable waste for transport to a local landfill by a licensed waste hauler e. Segregating all hazardous wastes such as oil, oily rags and oil-absorbent materials, mercury containing lights and lead-acid and nickel-cadmium batteries for disposal by a licensed firm specializing in the proper recycling or disposal of hazardous waste. f. Recycling solar panels that are nonfunctional or retired through the Solar Energy Industries Association National PV Recycling Program (or similar program). g. Recycling battery components at an offsite facility approved for disposal or recycling of batteries, to the maximum extent possible. [Waste Minimization Condition 1, Final Order on ASC, AMD1]

5.3 Pre-Construction (PRE) Conditions

Condition Number	Pre-Construction (PRE) Conditions
STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]	
PRE-GS-01	Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For the transmission line associated with the energy facility if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in

	OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line occurs during the certificate holder's negotiations to acquire construction rights on another part of the site. [General Standard Condition 4, Mandatory Condition OAR 345-025-0006(5), Final Order on ASC]
PRE-GS-02	At least 90 days prior to beginning construction, (unless otherwise agreed to by the Department), the certificate holder shall submit to the Department a compliance plan documenting and demonstrating actions completed or to be completed to satisfy the requirements of all site certificate terms and conditions and applicable statutes and rules. The plan shall be provided to the Department for review and compliance determination for each requirement. The Department may request additional information or evaluation deemed necessary to demonstrate compliance. [General Standard Condition 10, OAR 345-026-0048, Final Order on ASC]
PRE-GS-03	Before beginning construction of the facility or facility component, as applicable, the certificate holder shall provide the Department a final site plan showing access locations to the Pelton Dam to Round Butte 230 kV transmission line and its right of way for the line owner, unless an access agreement has been executed between certificate holder and line owner. [General Standard Condition 12, AMD1]
STANDARD: ORGANIZATIONAL EXPERTISE (OE) [OAR 345-022-0010]	
PRE-OE-01	Before beginning construction of the facility or a facility component, as applicable, the certificate holder shall provide to the Department the identity and qualifications of the major design, engineering and construction contractor(s). The certificate holder shall select contractors that have substantial experience in the design, engineering and construction of similar facilities and a demonstrated low rate of job incidence and injury rates. The certificate holder shall report to the Department any changes of major contractors. [Organizational Expertise Condition 2, Final Order on ASC]
STANDARD: STRUCTURAL STANDARD (SS) [OAR 345-022-0020]	
PRE-SS-01	Before beginning construction, the certificate holder shall submit a protocol for the site-specific geotechnical investigation to the Department, for review in consultation with DOGAMI. At least 60-days prior to the commencement of construction, unless otherwise approved by the Department, the certificate holder shall utilize a certified Professional Engineer or Geologist to conduct a site-specific geotechnical investigation consistent with ASC Exhibit H Section H.4.1 and prepare a report consistent with the Oregon State Board of Geologist Examiners Guideline for Preparing Engineering Geologic Reports, or newer guidelines if available to be submitted to the Department, for review in consultation with DOGAMI. The site-specific geotechnical investigation shall include a site-specific probabilistic seismic hazards assessment to inform Site Class design (see Structural Standard Condition 2). [Structural Standard Condition 1, Final Order on ASC]

STANDARD: LAND USE (LU) [OAR 345-022-0030]	
PRE-LU-01	Before beginning construction of the facility or facility component, as applicable, the certificate holder shall submit a Site Plan to the Department and Jefferson County for review; and shall obtain a site address and all other necessary local development permits (e.g. Driveway Connection Permit, to be followed by building permits, grading permit, and any others as applicable) from the Jefferson County Community Development Department. [Land Use Condition 1, Final Order on ASC]
PRE-LU-02	Before beginning construction of the facility or a facility component, the certificate holder shall provide documentation that underlying property owners have signed and recorded in the deed records for the county: a. a "Waiver of Right to Remonstrate Against Accepted Farm Use Practices and the Maintenance or Construction of County Roads." b. Agreement by project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4). [Land Use Condition 6, Final Order on ASC]
PRE-LU-03	Before beginning construction of the facility or facility component, as applicable, the certificate holder shall demonstrate that it has executed an interconnection agreement with the owner(s) of the 230 kV Pelton to Round Butte transmission line. [Land Use Condition 7, AMD1]
STANDARD: RETIREMENT AND FINANCIAL ASSURANCE (RT) [OAR 345-022-0050]	
PRE-RF-01	**Retirement and Financial Assurance Condition 4:** Before beginning construction of the facility or a facility component, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is $~~4.9~~4.5 million dollars (Q4 ~~2019~~ 2024 dollars), to be adjusted to the effective date, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition: a. The certificate holder may adjust the amount of the bond or letter of credit based on the design configuration of the facility, or any phase of the facility, by applying the unit costs presented in Table ~~3~~ 5 of the Final Order on ~~the ASC~~RFA1, and the contingencies illustrated in Table ~~3~~ 5 of the Final Order on ~~the ASC~~RFA1, and may further make adjustments based on unit costs for task and actions presented in ~~ASC Exhibit W~~ Attachment ~~W-1~~G ~~and W-2~~ to the Final Order on RFA1. Any revision to the restoration costs should be adjusted to the effective date as described in (b). Any modification to the unit costs presented in Table ~~3~~ 5 of the Final Order on ~~the ASC~~RFA1 are subject to review and approval by the Council. b. The certificate holder shall adjust the amount of the bond or letter of credit using the following calculation: i. Adjust the amount of the bond or letter of credit (expressed in Q4 ~~2019~~2024 dollars) to present value, using the U.S. Gross Domestic Product

	Implicit Price Deflator, Chain Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency and using the fourth quarter ~~2019~~2024 index value and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the index is no longer published, the Council shall select a comparable calculation to adjust fourth quarter ~~2019~~ 2024 dollars to present value. ii. Round the result total to the nearest $1,000 to determine the financial assurance amount. c. The certificate holder shall use an issuer of the bond or letter of credit and a bond or letter of credit form approved by the Council, based on the Council's pre-approved financial institution list and form. d. The Department and Council reserve the right to adjust the contingencies, as appropriate and necessary to ensure that costs to restore the site are adequate to maintain health and safety of the public and environment. [Retirement and Financial Assurance Condition 4, Mandatory Condition OAR 345-025-0006(8), Final Order on ASC, AMD1]
STANDARD: PUBLIC SERVICES (PS) [OAR 345-022-0110]	
PRE-PS-01	Before beginning construction, the certificate holder shall: a. Apply for and receive a final order from the County Board of Commissioners for annexation of the facility site into the service territory of the Jefferson County Fire District #1. b. Provide a copy of the annexation final order to the Department. [Public Services Condition 3, Final Order on ASC]
PRE-PS-02	Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall: a. Identify all water-related needs and estimate daily and annual water demand for each construction phase, as applicable. b. Provide to the Department, evidence such as a contract or purchase agreement demonstrating that adequate water supply to meet construction demand has been secured and that water for all construction activities will be legally obtained by service providers or third-party permits. [Public Services Condition 5, Final Order on AMD1]
STANDARD: WILDFIRE PREVENTION AND RISK MITIGATION (WF) OAR 345-022-0115	
PRE-WF-01	Prior to construction of the facility or phase, as applicable, the certificate holder shall: a. Finalize the Construction Wildfire Mitigation Plan, as provided in Attachment F-1 to the Final Order on RFA1. The final Construction Wildfire Mitigation Plan shall be submitted to the Department for review and approval. b. Complete pre-construction tasks and actions designated in the Construction Wildfire Mitigation Plan approved under sub a of PRE-WF-01. [Wildfire Prevention and Risk Mitigation Condition 1, Final Order on AMD1]
STANDARD: NOISE CONTROL REGULATIONS (NC) [OAR 340-035-0035]	

PRE-NC-01	Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall: a. Submit to the Department a noise summary report presenting the sound power levels (in dBA) of noise generating equipment including solar array inverters and transformers, substation transformers, battery system inverters and cooling systems, as applicable to final design. The sound power levels shall be supported by equipment manufacturer specifications and noise data. The certificate holder shall provide, in tabular format, a comparison of the sound power levels used in ASC Exhibit X for noise generating equipment and sound power levels validated by manufacturer specifications. b. If the sound power levels used in ASC Exhibit X to evaluate compliance with DEQ's noise rules are lower than sound power levels of final equipment selected, the certificate holder shall provide an updated noise analysis to demonstrate compliance with the ambient degradation standard and maximum allowable threshold. The ambient noise level utilized in ASC Exhibit X may be used for the updated noise analysis, if required. [Noise Control Condition 1, Final Order on ASC]

5.4 Construction (CON) Conditions

Condition Number	General (CON) Conditions
STANDARD: FISH AND WILDLIFE HABITAT (FW) [OAR 345-022-0060]	
CON-FW-01	The certificate holder shall hire a qualified biologist to develop and implement an environmental training course for all construction facility personnel and on-site contractors. The training course shall include, but not be limited to discussion on reporting of injured or dead wildlife on the site, adherence to site speed limits, and trash control. [Fish and Wildlife Condition 5, Final Order on ASC]
CON-FW-02	Before beginning construction of the facility or facility component, where vegetation clearing activities are to occur, the certificate holder shall conduct vegetation clearing activities between September 1 and March 1 to the greatest extent possible. Any vegetation clearing outside of this period will be conducted only following a nest clearance survey and will be performed no more than 7 days prior to the clearing of the area in order to ensure that no birds are nesting in the area in question. If birds are discovered, no clearing will occur until the birds have left the nest for the season. [Fish and Wildlife Condition 7, Final Order on ASC]
STANDARD: WILDFIRE PREVENTION AND RISK MITIGATION (WF) OAR 345-022-0115	
CON-WF-01	During construction of the facility or phase, as applicable, the certificate holder shall implement and require all onsite contractors and employees to adhere to, the Construction Wildfire Mitigation Plan required under PRE-WF-01. Updates to the Wildfire Mitigation Plan may be required if determined necessary by the certificate holder, certificate holder's contractor(s) or the Department to address wildfire

	hazard to public health and safety. Any Department required updates shall be implemented within 14 days, unless otherwise agreed to by the Department based on a good faith effort to address wildfire hazard. [Wildfire Prevention and Risk Mitigation Condition 2, Final Order on AMD1]

5.5 Pre-Operational (PRO) Conditions

Condition Number	Pre-Operational (PRO) Conditions
STANDARD: SOIL PROTECTION (SP) [OAR 345-022-0022]	
PRO-SP-01	If the final facility design includes battery storage, the certificate holder shall: a. Before beginning operation, prepare and submit to the Department a Spill Prevention Control and Countermeasure Plan (SPCC), developed in compliance with 40 CFR 112, based on the template provided in Attachment D of the Final Order on the ASC, and a Hazardous Materials Business Plan. b. During operations, adhere to the requirements of the SPCC and Hazardous Materials Business Plan, as finalized under sub(a) of this condition. [Soil Protection Condition 2, Final Order on ASC]
STANDARD: WILDFIRE PREVENTION AND RISK MITIGATION (WF) OAR 345-022-0115	
PRO-WF-01	Prior to operation of the facility or phase, as applicable, the certificate holder shall finalize the operational Wildfire Mitigation Plan (WMP), included as Attachment F-2 to the Final Order on RFA1. [Wildfire Prevention and Risk Mitigation Condition 3, Final Order on AMD1]

5.6 Operational (OPR) Conditions

Condition Number	Operational (OPR) Conditions
STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]	
OPR-GS-01	Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility. [General Standard Condition 6, Mandatory Condition Oar 345-025-0006(11), Final Order on ASC]
STANDARD: SOIL PROTECTION (SP) [OAR 345-022-0022]	
OPR-SP-01	During facility operation, the certificate holder may discharge solar panel wash water through evaporation or infiltration into the ground at the point of application. The use of chemicals, soaps, detergents and heated water is prohibited, unless Chemical Safety Data Sheets for low volatile organic compound/biodegradable

	cleaning chemicals and solvents are submitted to the Department for review and approval. Pressure washing is allowed, so long as it does not remove paint or other finishes. [Soil Protection Condition 3, Final Order on ASC]
STANDARD: WILDFIRE PREVENTION AND RISK MITIGATION (WF) OAR 345-022-0115	
OPR-WF-01	During operation, the certificate holder shall: a. Implement the Operational Wildfire Mitigation Plan, included as Attachment F-2 to the Final Order on RFA1. b. After the first operational year, annually review and update the evaluation of wildfire risk under OAR 345-022-0115(1)(b) and submit the results in the annual report for that year. c. Submit an updated Operational Wildfire Mitigation Plan to the Department if substantive changes are made to the plan because of the review under sub (b) of this condition, or at any other time substantiative revisions are made to Attachment F-2 of the Final Order on RFA1. d. Updates to the Wildfire Mitigation Plan may be required if determined necessary by the certificate holder, certificate holder's contractor(s) or the Department to address wildfire hazard to public health and safety. Any Department required updates shall be implemented within 14 days, unless otherwise agreed to by the Department based on a good faith effort to address wildfire hazard. [Wildfire Prevention and Risk Mitigation Condition 4, Final Order on AMD1]
STANDARD: NOISE CONTROL REGULATIONS (NC) [OAR 340-035-0035]	
OPR1-NC-01	Prior to and during facility operation, the certificate holder shall establish a noise complaint response program including facility contact name, phone number and email; procedure for filing complaints, facility response, and reporting to the Department; and details on how the information on filing noise complaints will be provided to members of the public. The certificate holder shall provide to the Department, for review, a copy of its procedure or plan for the noise complaint response program. [Noise Control Condition 2, Final Order on ASC]

5.7 Retirement (RET) Conditions

Condition Number	General (RET) Conditions
STANDARD: RETIREMENT AND FINANCIAL ASSURANCE (RT) [OAR 345-022-0050]	
RET-RT-01	The certificate holder must retire the facility in accordance with a retirement plan approved by the Council if the certificate holder permanently ceases construction or operation of the facility. The retirement plan must describe the activities necessary to restore the site to a useful, nonhazardous condition, as described in OAR 345-027-0110(5). After Council approval of the plan, the certificate holder must obtain the necessary authorization from the appropriate regulatory agencies to proceed with restoration of the site.

	[Retirement and Financial Assurance Condition 2, Mandatory Condition OAR 345-025-0006(9), Final Order on ASC]
RET-RT-02	If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in OAR 345-025-0006(8) to restore the site to a useful, nonhazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, nonhazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan. [Retirement and Financial Assurance Condition 2, Mandatory Condition OAR 345-025-0006(16), Final Order on ASC]

6.0 Successors and Assigns

To transfer this site certificate or any portion thereof or to assign or dispose of it in any other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0400.

7.0 Severability and Construction

If any provision of this agreement and certificate is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement and certificate did not contain the particular provision held to be invalid.

8.0 Execution

This site certificate may be executed in counterparts and will become effective upon signature by the Chair of the Energy Facility Siting Council and the authorized representative of the certificate holder.

IN WITNESS THEREOF, this site certificate has been executed by the State of Oregon, acting by and through the Energy Facility Siting Council and Madras PV1, LLC (certificate holder), a wholly owned subsidiary of Ecoplexus Inc (certificate holder parent company).

ENERGY FACILITY SITING COUNCIL

By: _____

Kent Howe, Chair

Date: _____

Madras PV1, LLC

By: _____

Authorized Representative

Date:_____

By: _____

Date:_____

Attachment A

Facility Location Map~~sets (ASC Exhibit C)~~

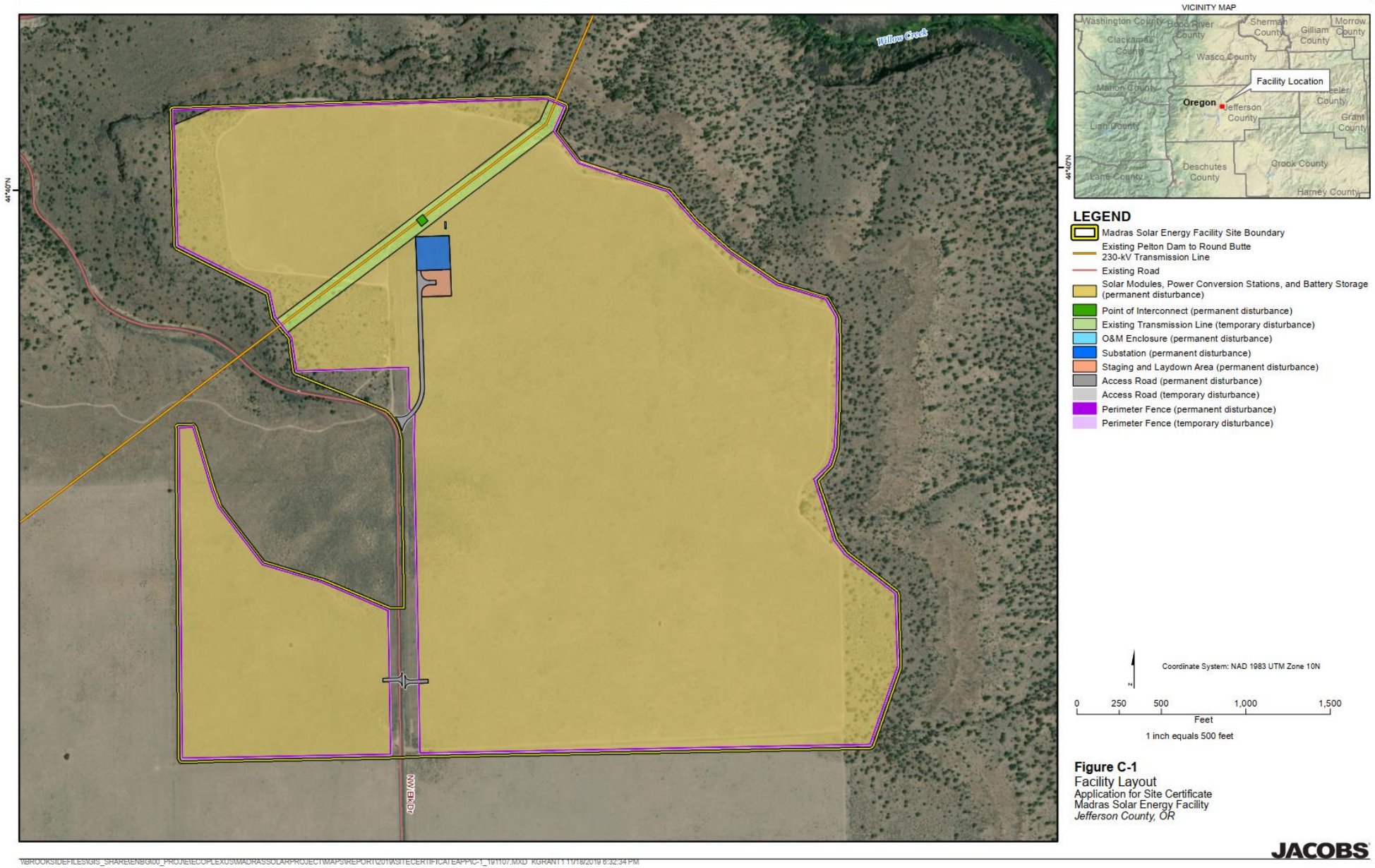


Figure C-1
Facility Layout
Application for Site Certificate
Madras Solar Energy Facility
Jefferson County, OR

JACOBS

\\BROOKSIDEFILESGIS_SHARE\ENBGI\00_PROJECTS\ECOPLEXUS\MADRASSOLARPROJECT\MAPS\REPORT\2019\SITECERTIFICATEAPPNC-1_191107.MXD KGRANT 11/18/2019 8:32:34 PM

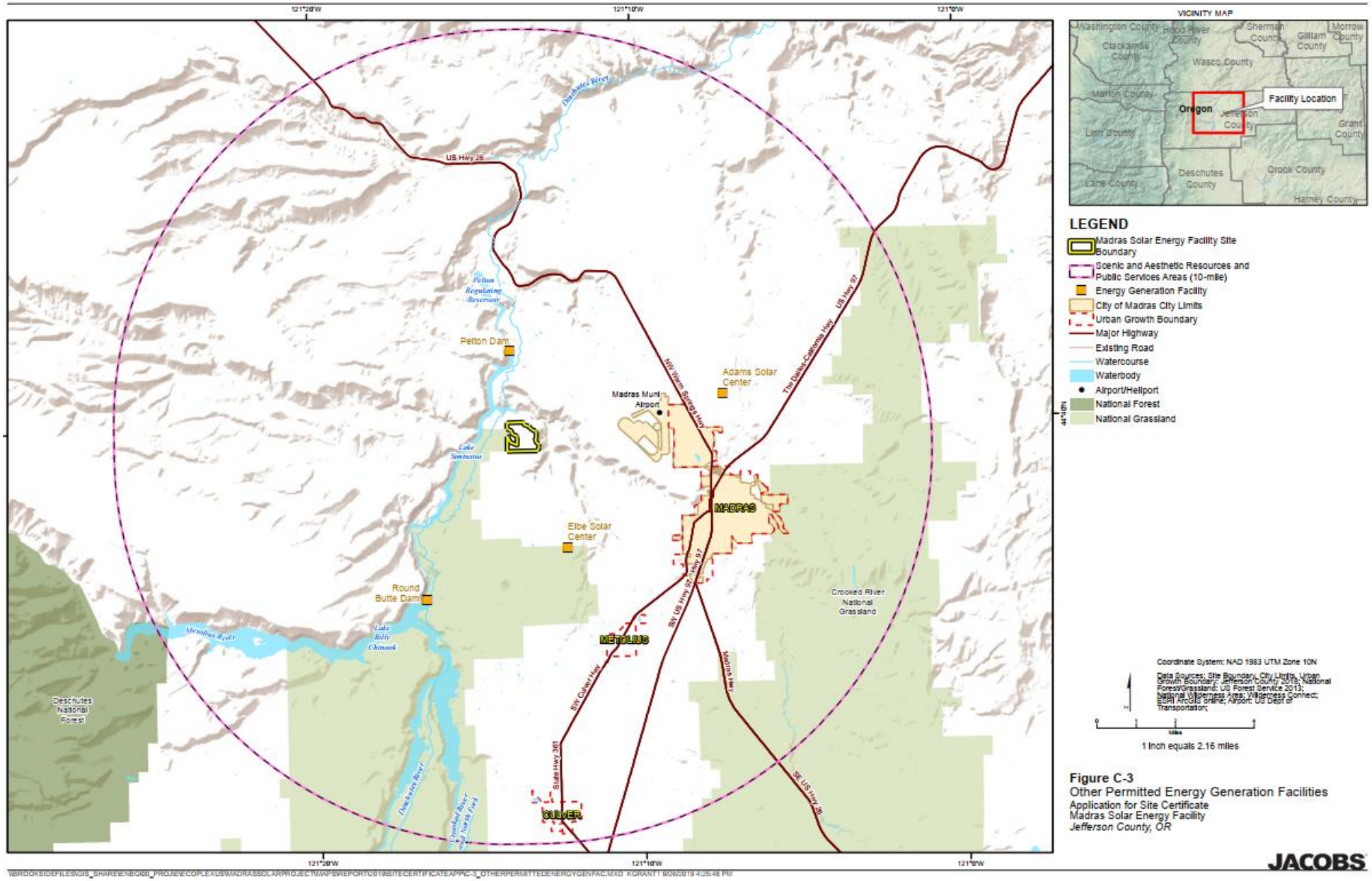


Figure C-3
Other Permitted Energy Generation Facilities
Application for Site Certificate
Madras Solar Energy Facility
Jefferson County, OR

Attachment B-1: DPO Comments

Table of Contents

MSEFAMD1 DPO comments (SHPO) Case No 18-0246 2024-10-21	2
MSEFAMD1 DPO comments (DSL) 2024-10-21	6
MSEFAMD1 DPO comments (ODAg) 2024-10-25	10
MSEFAMD1 DPO comments (Certificate Holder) 2024-11-13	15
MSEFAMD1 DPO comments (CTWS) 2024-11-12	19
MSEFAMD1 DPO comments (D. Craig) 2024-11-18	22
MSEFAMD1 DPO comments (CTWS) 2024-12-05	23

MCVEIGH-WALKER Chase * ODOE

From: CLEARANCE ORSHPO * OPRD
Sent: Monday, October 21, 2024 3:07 PM
To: MCVEIGH-WALKER Chase * ODOE
Subject: RE: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

THIS E-MAIL CONFIRMS RECEIPT OF AN ELECTRONIC SUBMISSION FOR AN HISTORIC RESOURCE/106 REVIEW

THIS E-MAIL DOES NOT REPRESENT CONCLUSION OF THE REVIEW/106 CONSULTATION.....

We received a clearance submission on your above referenced project. Thank you.

The assigned SHPO Case Number is 18-0246 . Refer to this case number on all future correspondence or submitting any change to the scope of work for review using the provided SHPO case number. Please retain this email for your records.

If the SHPO chooses to not respond within 30 calendar days from receipt of this submittal your responsibilities under Section 106 of the National Historic Preservation Act of 1966 as amended, Oregon Revised Statute 358.653, local permitting process, and/or other similar request are complete and the project may proceed as described in the submitted scope of work. The 30-day SHPO response period for this project ends after 11/16/2024 .

Federal and state laws protecting cultural resources, local permitting requirements; and necessary consultation with Native American Indian Tribes for federal, state and local government projects still apply.

See https://www.oregon.gov/oprd/OH/Pages/lawsrules.aspx .

Do not respond to this email.

From: MCVEIGH-WALKER Chase * ODOE <chase.mcveigh-walker@oregon.gov>
Sent: Friday, October 18, 2024 4:54 PM
To: CLEARANCE ORSHPO * OPRD <orshpo.clearance@oregon.gov>
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Subject: FW: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

Please see the attached documents.

Click here if you are having trouble viewing this message.

OREGON DEPARTMENT OF ENERGY ENERGY FACILITY SITING COUNCIL

Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

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RFA1 seeks Council approval to extend the construction commencement deadline 3 years; from June 25, 2024 to June 25, 2027; with a new completion deadline of 18 months after construction commences; and adjustments to quantities of previously approved facility components.

The Madras Solar Energy Facility is an approved but not yet constructed 63 megawatt (MW) solar PV electrical generating facility located within a site boundary of 284 acres, approximately 5.5 miles west of the City of Madras in Jefferson County, OR.

The certificate holder is Madras PV1, LLC., a wholly owned subsidiary of Ecoplexus Inc.

Comment Period:
Written comments on the DPO and RFA1 must be received by the Department **before the close of the record of the public hearing on November 14, 2024** and must be submitted in writing through the public comment portal, by mail, email, or fax to the address below, or via oral or written comments submitted at the public hearing:

Chase McVeigh-Walker, Senior Siting Analyst
550 Capitol Street NE
Salem, OR 97301
Phone: 971-600-5323
Email: chase.mcveigh-walker@energy.oregon.gov
Fax: 503-373-7806

The goal of the online comment portal is to provide a convenient option to submit input on projects. To get started, choose the "Madras Solar Energy Facility RFA1" project from the drop-down menu. Click "Next" and follow the instructions on screen. You will receive an email confirmation after submitting your comment.

ODOE also has a new docket system available which displays comments that have been submitted. Comments for this RFA1 and DPO will be posted to the docket and will normally be available to view within 3 business days of receipt.

Public Hearing:

A Public Hearing on the RFA1 and DPO will be held on November 14, 2024 in Madras, OR, to provide the public opportunity to comment. It will be held in person and remotely. Details on how to attend in person, or participate remotely, are included in the Public Notice that is posted to the project website.

In Person/Webinar Public Hearing Information:

Date: November 14, 2024
Start Time: 5:30 p.m. Pacific Time (PT)
In Person: Inn at Cross Keys Station
66 NW Cedar Street
Madras, Oregon 97741

You received this notice either because you previously signed up for email updates related to this project or all Energy Facility Siting Council activities. You will automatically receive all future notices unless you unsubscribe via ClickDimensions or by contacting ODOE.

If you have any questions or comments about ClickDimensions please feel free to contact ODOE's Administrative Assistant Nancy Hatch at 503-428-7905, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov.

Oregon Department of Energy
Leading Oregon to a safe, equitable, clean, and sustainable energy future.

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.



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AskEnergy@oregon.gov | 503-378-4040 | 550 Capitol St. NE in Salem
Click here to unsubscribe or here to change your Subscription Preferences.

MCVEIGH-WALKER Chase * ODOE

From: RYAN Peter * DSL
Sent: Monday, October 21, 2024 8:45 AM
To: MCVEIGH-WALKER Chase * ODOE
Subject: RE: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

Good Morning Chase,
In response to ODOE's request for comments for the Madras Solar Energy Facility Site Certificate, DSL notes that the approval for the wetland delineation report prepared for the site expired on March 5, 2024. However, that same agency decision from 2019 agreed with the applicant's consultant that no jurisdictional wetlands or waterways were present within the project's study area. Please let me know if you have any questions.

Peter Ryan, PWS Emeritus
Aquatic Resource Specialist
Oregon Department of State Lands | 775 Summer Street, NE, Ste. 100, Salem, Oregon 97301-1279
503.779.4159 | **Workdays:** Monday-Thursday | **Out of Office: Fridays**

From: MCVEIGH-WALKER Chase * ODOE <chase.mcveigh-walker@oregon.gov>
Sent: Friday, October 18, 2024 4:31 PM
To: MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Subject: FW: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

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OREGON DEPARTMENT OF ENERGY ENERGY FACILITY SITING COUNCIL

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Chase McVeigh-Walker, Senior Siting Analyst
550 Capitol Street NE
Salem, OR 97301
Phone: 971-600-5323
Email: chase.mcveigh-walker@energy.oregon.gov
Fax: 503-373-7806

The goal of the online comment portal is to provide a convenient option to submit input on projects. To get started, choose the "Madras Solar Energy Facility RFA1" project from the drop-down menu. Click "Next" and follow the instructions on screen. You will receive an email confirmation after submitting your comment.

ODOE also has a new docket system available which displays comments that have been submitted. Comments for this RFA1 and DPO will be posted to the docket and will normally be available to view within 3 business days of receipt.

Public Hearing:
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In Person: Inn at Cross Keys Station
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If you have any questions or comments about ClickDimensions please feel free to contact ODOE's Administrative Assistant Nancy Hatch at 503-428-7905, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov.

Oregon Department of Energy
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AskEnergy@oregon.gov | 503-378-4040 | 550 Capitol St. NE in Salem
Click here to unsubscribe or here to change your Subscription Preferences.

MCVEIGH-WALKER Chase * ODOE

From: BROWN Jordan A * ODA
Sent: Friday, October 25, 2024 10:11 AM
To: MCVEIGH-WALKER Chase * ODOE
Cc: MARSHALL Danielle * ODA
Subject: Re: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

Chase,
Thanks for checking and for the info you provided. After looking into the project, we still have no comment. No listed plants are known to occur in Jefferson County.
Cheers

Jordan Brown, Program Lead Conservation Biologist
Oregon Department of Agriculture – Native Plant Conservation
635 Capitol St NE, Salem, OR 97301-2532
PH: 541.737.2346 | CELL: 541.224.2245 | WEB: Oregon.gov/ODA
Pronouns: he, him, his

ODA Customer Service Survey – Please share your feedback in just 2-3 minutes: https://oda.fyi/ODAsurvey

Encuesta sobre el servicio de atención al cliente de la ODA – Por favor, comparta su opinion en solo 2-3 minutos: https://oda.fyi/ODAsurveyEspanol

---

From: MCVEIGH-WALKER Chase * ODOE <chase.mcveigh-walker@oregon.gov>
Date: Thursday, October 24, 2024 at 8:54 AM
To: BROWN Jordan A * ODA <Jordan.A.BROWN@oda.oregon.gov>
Cc: MARSHALL Danielle * ODA <Danielle.MARSHALL@oda.oregon.gov>
Subject: RE: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

Good morning Jordan (and Danielle),

I looked back through my records on this project, and it doesn't appear ODA commented on the record of the ASC when this project was being reviewed and approved in 2021. However, results of the certificate holders literature review indicate that there are/were no state listed threatened or endangered plants, or suitable habitat within the analysis area. The entirety of the 280-acre site boundary is Category 4 habitat (specifically Exotic annual Grassland, and Rabbitbrush Shrub-Steppe). At this point, feel free to comment on any changes in fact or law since the approval of the Final Order (June 2021) or the amendment request itself (to extend construction commencement and completion dates) if you would like to. Thanks for reaching out, and let me know if you have any additional questions or would like to set up a call.

Regards,
-Chase

Chase McVeigh-Walker
Senior Siting Analyst
pronouns: he/him/his
550 Capitol St. NE | Salem, OR 97301
P: 971-600-5323
P (In Oregon): 800-221-8035


From: BROWN Jordan A * ODA <Jordan.A.BROWN@oda.oregon.gov>
Sent: Friday, October 18, 2024 4:40 PM
To: MCVEIGH-WALKER Chase * ODOE <chase.mcveigh-walker@oregon.gov>
Cc: MARSHALL Danielle * ODA <Danielle.MARSHALL@oda.oregon.gov>
Subject: Re: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

Chase,
Did you already receive comment from ODA on this step of the project? I can't recall when we last provided comment on this particular project. If you do still need a response from us, please just let us know.
Thanks!

Jordan Brown, Program Lead Conservation Biologist
Oregon Department of Agriculture – Native Plant Conservation
635 Capitol St NE, Salem, OR 97301-2532
PH: 541.737.2346 | CELL: 541.224.2245 | WEB: Oregon.gov/ODA
Pronouns: he, him, his

ODA Customer Service Survey – Please share your feedback in just 2-3 minutes: https://oda.fyi/ODAsurvey

Encuesta sobre el servicio de atención al cliente de la ODA – Por favor, comparta su opinion en solo 2-3 minutos: https://oda.fyi/ODAsurveyEspanol

From: MCVEIGH-WALKER Chase * ODOE <chase.mcveigh-walker@oregon.gov>
Date: Friday, October 18, 2024 at 4:30 PM
To: MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Subject: FW: Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

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Email Summary of Public Notice of Complete Request for Amendment 1 for the Madras Solar Energy Facility Site Certificate, Issuance of Draft Proposed Order on RFA1, Public Comment Period on RFA1 and DPO, and Public Hearing

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Chase McVeigh-Walker, Senior Siting Analyst
550 Capitol Street NE
Salem, OR 97301
Phone: 971-600-5323
Email: chase.mcveigh-walker@energy.oregon.gov
Fax: 503-373-7806

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Public Hearing:

A Public Hearing on the RFA1 and DPO will be held on November 14, 2024 in Madras, OR, to provide the public opportunity to comment. It will be held in person and remotely. Details on how to attend in person, or participate remotely, are included in the Public Notice that is posted to the project website.

In Person/Webinar Public Hearing Information:

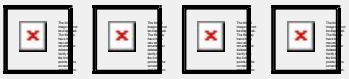
Date: November 14, 2024
Start Time: 5:30 p.m. Pacific Time (PT)
In Person: Inn at Cross Keys Station
66 NW Cedar Street
Madras, Oregon 97741

You received this notice either because you previously signed up for email updates related to this project or all Energy Facility Siting Council activities. You will automatically receive all future notices unless you unsubscribe via ClickDimensions or by contacting ODOE.

If you have any questions or comments about ClickDimensions please feel free to contact ODOE's Administrative Assistant Nancy Hatch at 503-428-7905, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov.

Oregon Department of Energy
Leading Oregon to a safe, equitable, clean, and sustainable energy future.

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.





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DESCHUTES VALLEY WATER DISTRICT
881 S.W. Culver Hwy. ● Madras, Oregon 97741 ● Phone 541.475.3849/Fax 541.475.6013

November 12, 2024

Paul Szewczykowski
Ecoplexus
pszewczykowski@ecoplexus.com

Dear Mr. Szewczykowski,

Deschutes Valley Water District is a municipal corporation incorporated under Chapter 264 of the O.R.S for the purpose of delivering domestic water to persons within and without the District boundaries that request it.

Ecoplexus has requested access to water during construction up to 12.8 MG and water on an annual basis of up to 1.7 MG for maintenance and cleaning of a solar array. We are willing and able to serve the needs with domestic drinking water for the requested amounts provided. Ecoplexus would have access to the water provided at our nearby fill station only. The fill station is located at 881 SW Culver Hwy, Madras, OR 97741.

Deschutes Valley Water District reserves the right to reject any or all applications for future water services when, in our opinion, additional services would jeopardize the sanitary water supply to our customers and/or if the applicant has not met the rules and regulations of the District.

Respectfully,

Joel Gehrett, P.E.
General Manager

JEFFERSON COUNTY
FIRE & EMS

Jefferson County Fire& EMS
PO BOX 30 – 765 S. 5th
Madras, OR 97741
P: 541-475-7274

To: Madras PV1, LLC
Re: Madras Solar Energy Project on Elk Dr.
Date: June 24th, 2024

Madras PV1, LLC,

As you are aware, Jefferson County Fire and EMS provides emergency response services from our main fire station in Madras – 765 South 5th St, with a substation in Culver, 200 1st Ave. We appreciate your continued communication regarding your location.

Effective March 22, 2023, your location at the following address has been permanently annexed into our fire district:

South Half of South half, section 30, township 10 south, range 13 east of the Willamette Meridian, Jefferson County, Oregon. 10-13-31 100, account #192.

North half, section 31, Township 10 south, Range 13 East of the Willamette Meridian, Jefferson County, Oregon, excepting county road #630. 10-31-31 100, Account 193.

We will ensure ongoing fire and life safety services to your location as part of our commitment to community safety.

If you have any questions, please call the district. Thank you for your cooperation and partnership in enhancing public safety within our district.

Best regards,

Jeff Blake
Fire Chief
Jefferson County Fire & EMS

From: Paul Szewczykowski
Sent: Wednesday, November 13, 2024 4:56 PM
To: MCVEIGH-WALKER Chase * ODOE
Cc: Rosalie Annand; Andrews, Carrie; Kyle Robrock
Subject: Re: DPO Public Comment Period Extension Request (CTWS) 2024-11-12
Attachments: JC Fire and EMS Service Letter (1).pdf

Chase, one more letter I'm not sure that you have. This is confirming our site has been annexed into the fire district service area.

On Wed, Nov 13, 2024 at 9:19 AM MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov> wrote:

> Thank your very much Paul. I will reference the letter/transmittal of the letter as a comment received from the certificate holder in my presentation. If you have any additional comments on the DPO, please don't hesitate to send my way, or provide tomorrow at the hearing.
>
> Regards,
> -Chase
>
> ---
>
> **From:** Paul Szewczykowski <pszewczykowski@ecoplexus.com>
> **Sent:** Wednesday, November 13, 2024 6:50 AM
> **To:** MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
> **Cc:** Rosalie Annand <rannand@ecoplexus.com>; Andrews, Carrie <carrie.andrews@tetratech.com>; Kyle Robrock <krobrock@ecoplexus.com>
> **Subject:** Re: DPO Public Comment Period Extension Request (CTWS) 2024-11-12
>
> Chase, if needed here is an updated letter of water availability from Deschutes Valley Water District.
>
> On Tue, Nov 12, 2024 at 5:27 PM Paul Szewczykowski <pszewczykowski@ecoplexus.com> wrote:
>
> > Received. Thanks again.
> >
> > On Tue, Nov 12, 2024 at 5:00 PM MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov> wrote:
> >
> > > No Problem Paul.
> > >
> > > Yes, I did receive your email yesterday (sorry for not confirming). I can/will incorporate the two photos into the PowerPoint.
> > >
> > > (in an effort to not send you a bajillion more emails)… Attached to this email, please find three additional "comments" from reviewing agencies received the last week of October. If any additional comments are received before the public hearing, I will provide them as promptly as possible to you and the Madras Team.
> > >
> > > Regards,
> > > -Chase
> > >
> > > OREGON DEPARTMENT OF ENERGY
> > >
> > > **Chase McVeigh-Walker**
> > > Senior Siting Analyst
> > > *pronouns: he/him/his*
> > > 550 Capitol St. NE | Salem, OR 97301
> > > P: 971-600-5323
> > > P (In Oregon): 800-221-8035
> > > Stay connected!
> > >
> > > ---
> > >
> > > **From:** Paul Szewczykowski <pszewczykowski@ecoplexus.com>
> > > **Sent:** Tuesday, November 12, 2024 3:46 PM
> > > **To:** MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
> > > **Cc:** Rosalie Annand <rannand@ecoplexus.com>; Andrews, Carrie <carrie.andrews@tetratech.com>; Kyle Robrock <krobrock@ecoplexus.com>
> > > **Subject:** Re: DPO Public Comment Period Extension Request (CTWS) 2024-11-12
> > >
> > > Thank you Chase. I did receive a copy of their request today from Ellen Grover. My understanding is that the Council will need to consider their request at the hearing.

Also, did you receive the current site photos I sent you yesterday? I was hoping you could include those in your presentation materials.

I have attached them again here.

Thanks again and I look forward to meeting you in person at the hearing.

On Tue, Nov 12, 2024 at 4:39 PM MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov> wrote:

> Good Afternoon Paul,
>
> Earlier today, the Department received an Extension Request for Madras Solar Energy Facility Amendment 1 Draft Proposed Order Public Comment Period. The request was submitted on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon, and is attached to this email.
>
> I see you were “CC’d” on the original email from Ellen Grover, but I wanted to make sure you received the request.
>
> Regards,
> -Chase
>
> OREGON DEPARTMENT OF ENERGY
>
> **Chase McVeigh-Walker**
> Senior Siting Analyst
> *pronouns: he/him/his*
> 550 Capitol St. NE | Salem, OR 97301
> P: 971-600-5323
> P (In Oregon): 800-221-8035
> Stay connected!

Ecoplexus, Inc. | LinkedIn

Ecoplexus, Inc. | LinkedIn

Ecoplexus, Inc. | LinkedIn

From: Ellen Grover
Sent: Tuesday, November 12, 2024 11:32 AM
To: MCVEIGH-WALKER Chase * ODOE
Cc: Cathy Ehli; Revital Kogot; Paul Szewczykowski
Subject: CTWS Extension of Public Record Request - Madras Solar
Attachments: Extension request-c1.pdf

Good morning Chase: Attached please find our request to extend the public record. Kind regards, Ellen

Ellen Grover
Partner
ellen.grover@bbklaw.com
T: (541) 382-3011 | D: (541) 318-9807
360 SW Bond Street, Suite 400, Bend, OR 97702
bbklaw.com |

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Ellen Grover
Partner
(541) 318-9807
ellen.grover@bbklaw.com

November 12, 2024

VIA EMAIL: CHASE.MCVEIGH-WALKER@ENERGY.OREGON.GOV

Chase McVeigh-Walker
Senior Siting Analyst
Oregon Department of Energy
550 Capital St. NE, 1st Floor
Salem, OR 97301

Re: Request for Extension of Public Record - Request for Amendment 1 to Site Certificate for Madras Solar Energy Facility Site Certificate ("Request for Amendment")

Dear Mr. McVeigh-Walker:

This office represents the Confederated Tribes of the Warm Springs Reservation of Oregon and its wholly owned enterprise Warm Springs Power and Water Enterprises (collectively "Tribe"). The Tribe submits this request for a 21-day extension of time to submit comments in this proceeding, from the current due date of November 14, 2024, to November 25, 2024. The Tribe has contacted counsel for Site Certificate Holder Madras PV1, LLC ("Madras") and is authorized to state that Madras does not oppose this motion.

The Commission has well-established discretion to control its own docket. The Tribe is a co-owner of the Federal Energy Regulatory Commission ("FERC") licensed facility on which Madras seeks transmission interconnection. Madras has initiated, and the Tribe is participating in, FERC proceedings regarding their proposed use of the facility. The Tribe is diligently working to prepare comments on the Request for Amendment. However, additional time—at least 11 days—is necessary to fully investigate the factual and legal issues raised by the Request for Amendment and prepare a fulsome response. This extension is consistent with the Tribe's extension request in the FERC proceeding and would allow the Tribe and Madras to focus on their efforts to schedule further discussions that have the potential to streamline the issues presented for the Council's review. No prejudice or inconvenience will result for any party as a result of granting this unopposed motion. Good cause thus exists to grant this request.

Accordingly, the Tribe respectfully request that the Council expeditiously grant this request and extend the deadline for submitting public record comments in this proceeding to November 25, 2024.

Sincerely,

Ellen Grover
of BEST BEST & KRIEGER LLP

EG

cc: Cathy Ehli
Paul Szewczykowski

From: ODOE ITService * ODOE
Sent: Monday, November 18, 2024 2:10 AM
To: MCVEIGH-WALKER Chase * ODOE
Subject: New Public Comment submitted for project : RFA1 and DPO for Madras Solar Energy Facility

---

Organization: alaska airlines terminal in seattle
Submitted by: daniel craig
Email: danielcraig3001@gmail.com
Zip Code:

Siting Project Phase: *DPO*

Comment Summary:
we need bad fo rhe environment

Please Click on the following link to view the full Comment Details

From: Ellen Grover
Sent: Thursday, December 5, 2024 2:44 PM
To: MCVEIGH-WALKER Chase * ODOE
Cc: Cathy Ehli; Robert Brunoe
Subject: Comments - Request for Amendment 1 to Site Certificate for Madras Solar Energy Facility Site Certificate
Attachments: Exhibit 6 - Order Disclaiming Jurisdiction 20001124-0002-c1.pdf

---

Good afternoon Chase:

On behalf of Warm Springs Power and Water Enterprises, I am providing the attached comments and information on the above referenced file. This will be in 4 separate emails due to size and is comprised of the following materials:

Comment Letter from WSPWE
Exhibit 1 - 1855 CTWS Treaty
Exhibit 2 – CTWS Ceded Lands Map
Exhibit 3 – CTWS/PGE Long Term Global Settlement Agreement
Exhibit 4 – FERC License for Project No. 2030
Exhibit 5 – Map of Madras Project Area
Exhibit 6 – FERC Order Disclaiming Jurisdiction

Please let me know if you have trouble receiving any of these materials.

Thank you, Ellen

BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Ellen Grover
Partner
ellen.grover@bbklaw.com
T: (541) 382-3011 | D: (541) 318-9807
360 SW Bond Street, Suite 400, Bend, OR 97702
bbklaw.com |

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Warm Springs Power & Water Enterprises
P.O. BOX 960 · WARM SPRINGS, OR 97761
(541) 553-1046

December 5, 2024

Chase McVeigh-Walker
Senior Siting Analyst
Oregon Department of Energy
550 Capital St. NE, 1st Floor
Salem, OR 97301

Re: Comments - Request for Amendment 1 to Site Certificate for Madras Solar Energy Facility Site Certificate ("Request for Amendment")

Dear Mr. McVeigh-Walker:

My name is Cathy Ehli, General Manager of Warm Springs Power and Water Enterprises ("WSPWE"). WSPWE is a wholly owned enterprise of the Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS" or "Tribe") . On behalf of the Tribe, by and through WSPWE, I submit the following comments on the requested Amendment 1 to Site Certificate for the Madras Solar Energy Facility Site Council.

A. Background

The Confederated Tribes of the Warm Springs Reservation of Oregon is a federally-recognized, self-governing, sovereign Indian tribe and the legal successor-in-interest to the Indian signatories of the Treaty with the Tribes of Middle Oregon, dated June 25, 1855, 12 Stat 963 ("Treaty" or "1855 Treaty").[1] CTWS is legally organized under a constitution and bylaws ratified by the members of the Tribe on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 12 of the Act of June 18, 1934, as amended and consists of three confederated Indian tribal groups: the Warm Springs, the Wasco and the Paiute. Pursuant to the 1855 Treaty, the Tribe ceded approximately 10 million acres of land ("ceded lands") to the United States and reserved approximately 640,000 acres for exclusive use and occupation of the Tribe and its members as a permanent homeland ("Warm Springs Reservation").[2]

While the Warm Springs Reservation is reserved for the Tribe's exclusive use, the Tribe's sovereignty and culture depends on the practices and lands and waters that have sustained it since time immemorial. Its people have utilized and occupied the Columbia River Basin since time immemorial. In the 1855 Treaty, the Tribe's predecessors ceded much of those lands to the United States. However, the Tribe and its members are a "salmon people" for whom fishing is "not much less necessary to [their] existence * * * than the atmosphere they breathe[]." *See United States v. Winans*, 198 US 371, 381 (1905). Retaining the Tribe's right, among others, to continue its fishing practices was a primary objective of the

[1] A copy of the 1855 Treaty is attached as Exhibit "1"
[2] A map of the Tribe's ceded lands is attached as Exhibit "2"

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Tribe during the treaty negotiations, and tribal rights to fish, unimpeded, at all usual and accustomed places, including off-Reservation, was enforced in the federal court litigation known as *United States v. Oregon*. The Tribe's rights under the 1855 Treaty include a legally-enforceable right to the protection of fish habitat because the treaty fishing right would be "worthless without harvestable fish." *United States v. Washington*, 853 F3d 946, 965 (9th Cir 2017), *aff'd by equally divided court*, 138 S Ct 1832 (2018). The Tribe's goal is to maintain and enhance traditional and Treaty-protected fish and wildlife resources within the Columbia River Basin, including the Deschutes basin within which the Pelton Hydroelectric Project No. 2030 ("Pelton Project") lies.

The Pelton Project consists of three dams on the Deschutes River[3] and is located wholly within the Tribe's ceded lands. Since the middle of the channel of the Deschutes River forms the eastern boundary of the Warm Springs Reservation, and one of the Deschutes River's major tributaries, the Metolius River, forms a significant portion of the southern boundary of the Reservation, approximately one-third of the Pelton Project FERC boundary is located on Warm Springs Reservation lands.

B. Federal Energy Regulatory Commission License

Under the Federal Power Act (FPA), the Federal Energy Regulatory Commission ("FERC") holds exclusive authority over the licensing and regulation of hydroelectric projects, including associated facilities and transmission lines. The Pelton Project was originally licensed by the Federal Power Commission ("FPC") in 1951. *See Federal Power Comm'n v. State of Oregon*, 349 U.S. 435 (1955). The original license was issued to PGE for a 50-year term and authorized construction of the Pelton and Reregulating Dams. In 1960 the FPC amended the license to authorize PGE to construct the Round Butte Dam, and in 1980 the license was later amended to authorize the Tribe to construct power generation facilities in the Reregulating Dam and to designate the Tribe and PGE as joint licensees. During the original license term, the Project had problems with fish passage. The dams created a total barrier to migration by resident salmonids from reaching historical spawning and rearing areas. By 1973, fish passage was abandoned in favor of a fish hatchery. *See Deschutes River Alliance v. Portland Gen. Elec. Co.*, 331 F.Supp 1187 (D.Or. 2018), *rev'd on other grounds* 1 F4th 1153 (9th Cir. 2021). This result had a profound impact on the Tribe.

In 1999, both the Tribe and PGE recognized that the FERC license for the Pelton Project would expire on December 31, 2001. The Tribe and PGE filed competing applications to continue the operation and maintenance of the Pelton Project. The Tribe and PGE entered into a Long-Term Global Settlement and Compensation Agreement[4], dated as of April 12, 2000 ("GSA") among the Tribe, the U.S. Department of Interior ("Interior") and PGE, and various related agreements, including an Ownership and Operation Agreement, dated as of January 1, 2002 by and between the Tribe and PGE (the "O&O Agreement"). The GSA and the use of Tribal lands and resources thereunder were approved by the U.S. Congress pursuant to Public Law 107-102, which was enacted December 27, 2001, and effective retroactively to the date of the GSA. As part of PGE's compensation to the Tribe, the GSA provided the

[3] The Round Butte Dam, the Pelton Dam, and the Reregulating Dam.
[4] A copy of the GSA is attached as Exhibit "3"

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Tribe with the opportunity to acquire an ownership interest in Pelton Project assets owned by PGE. The compensation granted by PGE to the Tribe under the GSA includes, among other forms of compensation, "[a]ll of PGE's actual and potential obligations to the Tribes pursuant to Section 10(e)" of the Federal Power Act. GSA at p.22. Under related agreements, it also obligates PGE to purchase all of the power from the Project at a price equal to public index price, including the Tribes' ownership allocation of such power.

After exercising an initial purchase of 33.33% and a first purchase option of 16.66%, the Tribe is now a 49.99 percent owner of the Pelton Project assets previously entirely owned by PGE, including, among other facilities, the 230 kV generator tie line between the Pelton Dam and the Round Butte Switchyard ("Pelton generator line"). A second purchase option of 0.02%, exercisable on December 31, 2036, will result in the Tribe being the majority owner of the Pelton Project.

In June 2001, the Tribe and PGE filed an amendment to combine their license applications and became co-applicants for a new license. In July 2004, the Tribe and PGE, along with twenty stakeholders including Deschutes County, entered into Pelton Project Relicensing Settlement Agreement. *See Deschutes River Alliance, supra*. The Tribe and PGE filed the Pelton Project Relicensing Settlement Agreement with FERC. On June 21, 2005, FERC issued an order approving the settlement and issuing a new fifty-year license to the Tribe and PGE ("2005 FERC License"). 111 FERC ¶ 61,450, order on rehearing, 117 FERC ¶ 61,112 (2006).[5] The Tribe and PGE are joint-licensees without limitation, and therefore PGE and the Tribes are "jointly and severally liable for fulfilling all statutory and regulatory obligations under the license" for the Project.[6]

In connection with the 2005 FERC License, FERC required significant protection, mitigation and enhancement measures ("PMEs") at the Pelton Project, including a Fish Passage Plan that is intended to establish self-sustaining harvestable anadromous fish runs of Chinook salmon, steelhead, and sockeye salmon above the Pelton Project. *See Id*. The Fish Passage Plan contains a three- phase fish passage program that requires substantial capital improvements and fish reintroduction efforts. The 2005 FERC License also required construction of a selective water withdrawal facility ("SWW") for the purpose of improving water quality conditions and aiding the Fish Passage Program and the establishment of the Pelton Round Butte Fund for the purpose of funding enhancement projects for fish and wildlife resources and habitat throughout the Deschutes basin. *See Deschutes River Alliance, supra*. Since the issuance of the 2005 FERC license, the Tribe and PGE have spent, in accordance with their ownership interests, (either directly or through the Pelton Round Butte Fund) over $175 million on the Fish Passage Plan and other enhancement projects.[7]

---

[5] A copy of the 2005 FERC License is attached as Exhibit "4"

[6] *Portland Gen. Elec. Co. & Confederated Tribes of the Warm Springs Reservation of Or.*, 93 FERC ¶ 61,183 at p. 61,603 and 61,604 (explaining that designating PGE and the Tribes as co-licensees without limitation "advances our policy that co-licensees be jointly and severally liable for license compliance").

[7] The Tribe has issued the Confederated Tribes of Warm Springs Reservation of Oregon's Hydroelectric Revenue Bonds (Pelton-Round Butte Project) Series 2021 (Taxable Fixed Rate) in the principal amount of $40,955,000 (the "Series 2021 Bonds") to finance the first purchase option to acquire the additional 16.66 interest in the Pelton Project and related expenses, and issued the Tribes' Hydroelectric Revenue Refunding Bonds, Series 2019A (Pelton-Round Butte Project) (Taxable Fixed Rate refunding) (Green Bonds) in the principal amount of $19,970,00 the Hydroelectric revenue Refunding Bonds, Series 2019B (Pelton-Round Butte Project) (Tribal Economic Development bonds – Tax-Exempt Fixed Rate Refunding) (Green

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The Tribe's power sale revenues to PGE under the O&O Agreement, therefore, are necessary to satisfy PGE's obligations under the 2005 FERC license to pay 10(e) compensation to the Tribe for its use of Tribal lands for the Pelton Project and supply needed capital to pay for the Tribe's ownership acquisition costs and, importantly, for the extensive mitigation and enhancement projects under the 2005 FERC license, including the Fish Passage Program. The Pelton generator line is necessary to ensure that the Tribe's generation from the Pelton dam produces the revenues critical for license compliance and to meet the Tribe's obligations and sovereign interests. It is essential to the Tribe, among other considerations, that this facility continue to operate efficiently to meet these needs.

C. Madras PV1 LLC Request

In 2020, the Council determined that Madras PV1 LLC ("Madras") submitted a complete application for a site certificate. In its 2021 Site Certificate, the Council authorizes certain related and supporting facilities including a substation, point of interconnection switching station and 230 kV transmission line. In fact, the EFSC Site Certificate identifies a fenced Facility Site Boundary. *See* Site Certificate Figure C-1. The Pelton generator line is included in the Pelton Project boundary. This means it is within FERC's exclusive jurisdiction under Part I of the Federal Power Act. Yet, the Site Certificate incorporates the Pelton generator line as bisecting the EFSC Facility Site Boundary which means that the State Site Certificate would eliminate access to the FERC licensed facility by construction of a fenced boundary. Site Certificate Condition GEN-GS-07 also purports to authorize the certificate holder to "construct a 230 kV transmission line anywhere within the approved corridor, subject to the site certificate conditions of the site certificate. The approved corridor extends approximately 200 feet in length between the facility substation and the Point of Interconnect, and 0.5-of-a-mile in width" which means that the Council is authorizing a related and supporting facility to enter the FERC project boundary for a non-Pelton Project purpose.[8]

The Site Certificate describes the 230 kV transmission line as follows:

> The 230 kV transmission line extends approximately 200 feet within the approved site boundary and connects the Point of Interconnect to PGE's existing Pelton Dam to Round Butte 230 kV transmission line. The 230 kV transmission line is approved to use up to 4, 80-foot H-frame poles, each placed in concrete foundations approximately 12 feet deep and 4 feet in diameter.

This description is both inaccurate and incomplete. The Pelton generator line is not, in fact, an interconnected transmission grid line, but a generator-owned lead line and it is designated as a "primary transmission line" under the FERC Pelton Project license.[9] *See* 111 FERC ¶ 61,450 at pp 5 and 41. The

Bonds), in the principal amount of $20,375,000 (collectively the "Series 2019 Bonds")to refund certain outstanding obligations of the Tribe with respect to the Pelton Project, of which $78 million remains outstanding.

[8] A map that shows the components of the Pelton Project and the proposed Madras Solar project is attached at Exhibit "5"

[9] A "primary transmission line" designated under a FERC license is one that conveys electricity to the interconnected grid. https://www.ferc.gov/sites/default/files/2020-04/HydropowerPrimer.pdf

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7.9-mile long Pelton generator line carries only energy generated by the Tribe and PGE at the Pelton dam to the Round Butte Switchyard where the energy generation then enters the interconnected transmission system. *Id*. The Pelton generator line is jointly owned by PGE (50.01%) and the Tribe (49.99%), and the Tribe is not regulated as a public utility.[10] As such, the Pelton generator line is not subject to regulation under FERC's open access policies.

This distinction is material to the Request for Amendment. OAR 245-027-0375(2) provides that in order for the Council to "issue an amended site certificate, the Council must determine that the preponderance of evidence on the record supports" a conclusion that the "facility complies with all laws and Council standards applicable to an original site certificate application." We do not believe the Council can make this finding based on the current record.

Madras' facility would utilize more than 12 acres of high-value farmland and therefore does not comply with OAR 660-0330130(38)(g). Pursuant to OAR 345-022-0030, Madras sought to obtain approval through an exception to statewide planning goal 3. The Council approved the goal exception, finding that the proposed facility was "locationally dependent." Final Order on Application for Site Certificate in the Matter of the Application for Site Certificate for the Madras Solar Energy Facility (June 21, 2021) ("Final Order") at 101. In particular, Madras asserted that it had "immediate onsite interconnection to Portland General Electric's (PGE) 230 kV Pelton to Round Butte transmission line, which then provides interconnection and delivery from the facility to the regional transmission system without the need to build a new transmission line." *Id*. This was a critical assertion supporting the Council's goal exception determination:

> "The Council agrees that the fact that there is an existing 230 kV transmission line within the site boundary, with interconnection capacity, where only a short transmission line segment within the proposed perimeter fenceline would be needed represents unique conditions that would allow for a nearly direct interconnection." *Id*.

The Council also determined that the 200 foot long related and supporting facility to the proposed point of interconnection was an "associated transmission line" subject to the siting standards of ORS 215.274. The Council found that Madras could demonstrate compliance with this standard because the associated transmission line is locationally dependent—*viz*.,

> "the applicant explains that the facility has been sited along PGE's existing 230-kV Pelton Dam to Round Butte transmission line as shown on figure K-2. This location would connect the facility to the Northwest power grid. The Facility layout was specifically designed to allow the interconnection with the existing 230-kV transmission line to occur in the middle of the Facility site. The Facility substation is positioned in close proximity to the existing PGE transmission line right of way. As represented on Figures C-

[10] 93 FERC ¶ 61, 182 (FERC Docket No. ER01-53-000, issued November 21, 2000), attached as Exhibit "6"

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> 2a and C-2b of ASC Exhibit C, the POI would be located within the existing PGE Transmission line right of way." Final Order at 89.

Madras' facility lacks access to any capacity on the Pelton generator line and any interconnection to the Northwest power grid because it has not obtained any approval to interconnect with the Tribe's facility and it has not otherwise obtained approval for a non-Pelton Project use of Pelton Project lands and facilities. The Tribe asserts that this is not feasible without the Tribe's consent. While the Tribe understands that Madras has entered into a Large Generator Interconnection Agreement ("LGIA") with PGE, the Tribe is not a party to this agreement, PGE has no authority to bind the Tribe, and the Tribe has not agreed to an interconnection of its facility. The LGIA is also expressly contingent on Madras obtaining "support for the FERC application in writing from the Joint Licensee of the Pelton-Round Butte Project, the Confederated Tribes of Warm Springs." The circumstances of Madras' request are unique. The Tribe has reasonably considered the commercial and regulatory implications related to this request, of which there are many, and determined that they are not inconsequential. The Tribe has not provided its consent, although it remains open to the possibility of providing the necessary consent.

Madras has filed a FERC petition for Declaratory Order, or in the Alternative, Application for Interconnection and Transmission Services and Request for Expedited Action. (Docket Nos. EL24-150-000, TX24-5-000). In this action, Madras asks FERC to exercise discretion to declare that the Tribe does not have the right to consent to interconnection of its facility and, in the alternative, to issue an order under Sections 210, 211 and 212 of the Federal Power Act directing that the Tribe and Madras take all actions needed to make Madras' interconnection effective. Madras further asserts that FERC has reserved discretionary authority in the 2005 FERC license to amend the Pelton Project hydropower license to the extent necessary to allow Madras' interconnection. The Tribe does not concur that FERC has the discretionary authority as advocated by Madras and, to the extent discretion does exist, does not believe that FERC will order use of the Tribe's facilities over its objection. For example and without limitation, under Section 6 of the FPA, provides that licenses "may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' notice." 16 USC § 799. The language of Section 6 indicates that FERC lacks authority to alter the license without the mutual consent of the licensee and the Commission. 16 USC § 799. Accordingly, this requires both licensees (the Tribe and PGE) to consent to Madras' proposal.

Further, the Tribe questions whether the Council is preempted under the FPA. The language of the FPA clearly authorizes only FERC to issue licenses for dams to generate electrical power, including the transmission of the same. 16 USC § 797(e). While the State retains some control of the appropriation, use and distribution of water, none of the Council's findings or its Site Certificate deal with water. *See Sayles Hydro Associates v. Maughan,* 985 Fed 451 (9th Cir. 1993) (finding that Congress has occupied the field in the matter of federal licenses under the Federal Power Act and that the state lacks the power to do anything but determine proprietary water rights). Instead, the Site Certificate includes the FERC licensed Pelton generator line within the state siting boundary, where the state certificate would eliminate access to the line by construction of a fenced boundary. This represents a conflict. Furthermore, as noted above, Site Certificate Condition GEN-GS-07 purports to authorize the certificate holder to "construct a 230 kV transmission line anywhere within the approved corridor, subject to the site certificate conditions of the site

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certificate. The approved corridor extends approximately 200 feet in length between the facility substation and the Point of Interconnect, and 0.5-of-a-mile in width." In other words, the Council is authorizing a related and supporting facility to enter the FERC project boundary for a non-Pelton Project purpose where FERC has reserved exclusive authority to regulate the Pelton generator line.

D. Conclusion

In short, without the Tribe's consent and/or if FERC issues an order granting the relief requested by Madras, the Tribe respectfully asserts that the Council simply cannot make the findings necessary to meet its standards and that Council approvals that are inconsistent with FERC's exclusive authority may be preempted. The Tribe urges the Commission, at a minimum, to impose conditions of approval necessary to permit it to make the necessary findings to meet the Council's standards and to craft any modifications to the Site Certificate necessary to conflict with FERC authority.

Sincerely,

DocuSigned by:
Cathy Ehli
AED9618436146B...

Cathy Ehli – General Manager
of Warm Springs Power & Water Enterprises

EXHIBIT 1

1855 WL 10418(Trty.)
(TREATY)

TREATY WITH THE TRIBES OF MIDDLE OREGON, 1855.

June 25, 1855.

Articles of agreement and convention made and concluded at Wasco, near the Dalles of the Columbia River, in Oregon Territory, by Joel Palmer, superintendent of Indian affairs, on the part of the United States, and the following-named chiefs and head-men of the confederated tribes and bands of Indians, residing in Middle Oregon, they being duly authorized thereto by their respective bands, to wit: Symtustus, Locks-quis-sa, Shick-a-me, and Kuck-up, chiefs of the Taih or Upper De Chutes band of Walla-Wallas; Stocket-ly and Iso, chiefs of the Wyam or Lower De Chutes band of Walla-Wallas; Alexis and Talkish, chiefs of the Tenino band of Walla-Wallas; Yise, chief of the Dock-Spus or John Day's River band of Walla-Wallas; Mark, William Chenook, and Cush-Kella, chiefs of the Dalles band of the Wascoes; Toh-simph, chief of the Ki-gal-twal-la band of Wascoes; and Wal-la-chin, chief of the Dog River band of Wascoes. [FNA][FNB]

ARTICLE 1

The above-named confederated bands of Indians cede to the United States all their right, title, and claim to all and every part of the country claimed by them, included in the following boundaries, to wit: [FNC]

Commencing in the middle of the Columbia River, at the Cascade Falls, and running thence southerly to the summit of the Cascade Mountains; thence along said summit to the forty-fourth parallel of north latitude; thence east on that parallel to the summit of the Blue Mountains, or the western boundary of the Sho-sho-ne or Snake country; thence northerly along that summit to a point due east from the head-waters of Willow Creek; thence west to the head-waters of said creek; thence down said stream to its junction with the Columbia River; and thence down the channel of the Columbia River to the place of beginning. Provided, however, that so much of the country described above as is contained in the following boundaries, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation, to wit: [FND][FNE]

Commencing in the middle of the channel of the De Chutes River opposite the eastern termination of a range of high lands usually known as the Mutton Mountains; thence westerly to the summit of said range, along the divide to its connection with the Cascade Mountains; [FNF] thence to the summit of said mountains; thence southerly to Mount Jefferson; thence down the main branch of De Chutes River; heading in this peak, to its junction with De Chutes River; and thence down the middle of the channel of said river to the place of beginning. All of which tract shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white person be permitted to reside upon the same without the concurrent permission of the agent and superintendent. [FNG]

The said bands and tribes agree to remove to and settle upon the same within one year after the ratification of this treaty, without any additional expense to the United States other than is provided for by this treaty; and, until the expiration of the time specified, the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all white citizens the right to enter upon and occupy as settlers any lands not included in said reservation, and not actually inclosed by said Indians. Provided, however, That prior to the removal of said Indians to said reservation, and before any improvements contemplated by this treaty shall have been commenced, that if the three principal bands, to wit: the Wascopum, Tiah, or Upper De Chutes, and the Lower De Chutes bands of Walla-Wallas shall express in council, a desire that some other reservation may be selected for them, that the three bands named may select each three persons of their respective bands, who with the superintendent of Indian affairs or agent, as may by him be directed, shall proceed to examine, and if another location can be selected, better suited to the condition and wants of said Indians, that is unoccupied by the whites, and upon which the board of

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commissioners thus selected may agree, the same shall be declared a reservation for said Indians, instead of the tract named in this treaty. Provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them. And provided, also, That if any band or bands of Indians, residing in and claiming any portion or portions of the country in this article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to receive such parr of the several and other payments herein named as a consideration for the entire country described as aforesaid as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid, as consideration and payment in full for the tracts in said country claimed by them. And provided, also, That where substantial improvements have been made by any members of the bands being parties to this treaty, who are compelled to abandon them in consequence of said treaty, the same shall be valued, under the direction of the President of the United States, and payment made therefor; or, in lieu of said payment, improvements of equal extent and value at their option shall be made for them on the tracts assigned to each respectively. [FNH][FNI][FNJ][FNK] [FNL][FNM]

ARTICLE 2

In consideration of, and payment for, the country hereby ceded, the United States agree to pay the bands and tribes of Indians claiming territory and residing in said country, the several sums of money following, to wit: [FNN]

Eight thousand dollars per annum for the first five years, commencing on the first day of September, 1856, or as soon thereafter as practicable.

Six thousand dollars per annum for the term of five years next succeeding the first five.

Four thousand dollars per annum for the term of five years next succeeding the second five; and

Two thousand dollars per annum for the term of five years next succeeding the third five.

All of which several sums of money shall be expended for the use and benefit of the confederated bands, under the direction of the President of the United States, who may from time to time, at his discretion determine what proportion thereof shall be expended for such objects as in his judgment will promote their well-being and advance them in civilization; for their moral improvement and education; for building, opening and fencing farms, breaking land, providing teams, stock, agricultural implements, seeds, &c.; for clothing, provisions, and tools; for medical purposes, providing mechanics and farmers, and for arms and ammunition. [FNO]

ARTICLE 3

The United States agree to pay said Indians the additional sum of fifty thousand dollars, a portion whereof shall be applied to the payment for such articles as may be advanced them at the time of signing this treaty, and in providing, after the ratification thereof and prior to their removal, such articles as may be deemed by the President essential to their want; for the erection of buildings on the reservation, fencing and opening farms; for the purchase of teams, farming implements, clothing and provisions, tools, seeds, and for the payment of employees; and for subsisting the Indians the first year after their removal. [FNP]

ARTICLE 4

In addition to the considerations specified the United States agree to erect, at suitable points on the reservation, one sawmill and one flouring-mill; suitable hospital buildings; one school-house; one blacksmith-shop with a tin and a gunsmith-shop thereto attached; one wagon and plough maker shop; and for one sawyer, one miller, one superintendent of farming operations, a farmer, a physician, a school-teacher, a blacksmith, and a wagon and plough maker, a dwelling house and the requisite outbuildings for

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each; and to purchase and keep in repair for the time specified for furnishing employees all necessary mill-fixtures, mechanics' tools, medicines and hospital stores, books and stationery for schools, and furniture for employees. [FNQ]

The United States further engage to secure and pay for the services and subsistence, for the term of fifteen years, of one farmer, one blacksmith, and one wagon and plough maker; and for the term of twenty years, of one physician, one sawyer, one miller, one superintendent of farming operations, and one school teacher. [FNR]

The United States also engage to erect four dwelling-houses, one for the head chief of the confederated bands, and one each for the Upper and Lower De Chutes bands of Walla-Wallas, and for the Wascopum band of Wascoes, and to fence and plough for each of the said chiefs ten acres of land; also to pay the head chief of the confederated bands a salary of five hundred dollars per annum for twenty years, commencing six months after the three principal bands named in this treaty shall have removed to the reservation, or as soon thereafter as a head chief should be elected: And provided, also, That at any time when by the death, resignation, or removal of the chief selected, there shall be a vacancy and a successor appointed or selected, the salary, the dwelling, and improvements shall be possessed by said successor, so long as he shall occupy the position as head chief; so also with reference to the dwellings and improvements provided for by this treaty for the head chiefs of the three principal bands named. [FNS][FNT]

ARTICLE 5

The President may, from time to time, at his discretion, cause the whole, or such portion as he may think proper, of the tract that may now or hereafter be set apart as a permanent home for these Indians, to be surveyed into lots and assigned to such Indians of the confederated bands as may wish to enjoy the privilege, and locate[FNU] thereon permanently. To a single person over twenty-one years of age, forty acres; to a family of two persons, sixty acres; to a family of three and not exceeding five, eighty acres; to a family of six persons, and not exceeding ten, one hundred and twenty acres; and to each family over ten in number, twenty acres for each additional three members. And the President may provide such rules and regulations as will secure to the family in case of the death of the head thereof the possession and enjoyment of such permanent home and the improvement thereon; and he may, at any time, at his discretion, after such person or family has made location on the land assigned as a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years and shall be exempt from levy, sale, or forfeiture, which condition shall continue in force until a State constitution embracing such lands within its limits shall have been formed, and the legislature of the State shall remove the restrictions. Provided, however, That no State legislature shall remove the restrictions herein provided for without the consent of Congress. And provided, also, That if any person or family shall at any time neglect or refuse to occupy or till a portion of the land assigned and on which they have located, or shall roam from place to place indicating a desire to abandon his home, the President may, if the patent shall have been issued, revoke the same, and if not issued, cancel the assignment, and may also withhold from such person, or family, their portion of the annuities, or other money due them, until they shall have returned to such permanent home and resumed the pursuits of industry, and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of Indians residing on said reservation. [FNV][FNW][FNX]

ARTICLE 6

The annuities of the Indians shall not be taken to pay the debts of individuals. [FNY]

ARTICLE 7

The confederated bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all the citizens thereof, and pledge themselves to commit no depredation on the property of said citizens; and should any one or more of the Indians violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities; nor will they make war on any other tribe of Indians except in self-defence, but submit all matters of difference between them and other Indians to the Government of the United States, or its agents for decision, and abide thereby; and if any of the said

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Indians commit any depredations on other Indians, the same rule shall prevail as that prescribed in the case of depredations against citizens; said Indians further engage to submit to and observe all laws, rules, and regulations which may be prescribed by the United States for the government of said Indians. [FNZ][FNAA] [FNBB]

ARTICLE 8

In order to prevent the evils of intemperance among said Indians, it is hereby provided, that if any one of them shall drink liquor to excess, or procure it for others to drink, his or her proportion of the annuities may be withheld from him or her for such time as the President may determine. [FNCC]

ARTICLE 9

The said confederated bands agree that whensoever, in the opinion of the President of the United States, the public interest may require it, that all roads, highways, and railroads shall have the right of way through the reservation herein designated, or which may at any time hereafter be set apart as a reservation for said Indians. [FNDD]

This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States. [FNEE]

In testimony whereof, the said Joel Palmer, on the part of the United States, and the undersigned, chiefs, headmen, and delegates of the said confederated bands, have hereunto set their hands and seals, this twenty-fifth day of June, eighteen hundred fifty-five.

Joel Palmer, Superintendent of Indian Affairs, O.T. (L.S.)

Wasco:

Mark, his x mark. (L.S.)

William Chenook, his x mark. (L.S.)

Cush Kella, his x mark. (L.S.)

Lower De Chutes:

Stock-etley, his x mark. (L.S.)

Iso, his x mark. (L.S.)

Upper De Chutes:

Simtustus, his x mark. (L.S.)

Locksquissa, his x mark. (L.S.)

Shick-ame, his x mark. (L.S.)

Kuck-up, his x mark. (L.S.)

Tenino:

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Alexsee, his x mark. (L.S.)

Talekish, his x mark. (L.S.)

Dog River Wasco:

Walachin, his x mark. (L.S.)

Tah Symph, his x mark. (L.S.)

Ash-na-chat, his x mark. (L.S.)

Che-wot-nleth, his x mark. (L.S.)

Te-cho, his x mark. (L.S.)

Sha-qually, his x mark. (L.S.)

Louis, his x mark. (L.S.)

Yise, his x mark. (L.S.)

Stamite, his x mark. (L.S.)

Ta-cho, his x mark. (L.S.)

Penop-teyot, his x mark. (L.S.)

Elosh-kish-kie, his x mark. (L.S.)

Am. Zelic, his x mark. (L.S.)

Ke-chac, his x mark. (L.S.)

Tanes Salmon, his x mark. (L.S.)

Ta-kos, his x mark. (L.S.)

David, his x mark. (L.S.)

Sowal-we, his x mark. (L.S.)

Postie, his x mark. (L.S.)

Yawan-shewit, his x mark. (L.S.)

Own-aps, his x mark. (L.S.)

Kossa, his x mark. (L.S.)

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Pa-wash-ti-mane, his x mark. (L.S.)

Ma-we-nit, his x mark. (L.S.)

Tipso, his x mark. (L.S.)

Jim, his x mark. (L.S.)

Peter, his x mark. (L.S.)

Na-yoct, his x mark. (L.S.)

Wal-tacom, his x mark. (L.S.)

Cho-kalth, his x mark. (L.S.)

Pal-sta, his x mark. (L.S.)

Mission John, his x mark. (L.S.)

Le Ka-ya, his x mark. (L.S.)

La-wit-chin, his x mark. (L.S.)

Low-las, his x mark. (L.S.)

Thomson, his x mark. (L.S.)

Charley, his x mark. (L.S.)

Copefornia, his x mark. (L.S.)

Wa-toi-mettla, his x mark. (L.S.)

Ke-la, his x mark. (L.S.)

Pa-ow-ne, his x mark. (L.S.)

Kuck-up, his x mark. (L.S.)

Poyet, his x mark. (L.S.)

Ya-wa-clax, his x mark. (L.S.)

Tam-cha-wit, his x mark. (L.S.)

Tam-mo-yo-cam, his x mark. (L.S.)

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Was-ca-can, his x mark. (L.S.)

Talle Kish, his x mark. (L.S.)

Waleme Toach, his x mark. (L.S.)

Site-we-loch, his x mark. (L.S.)

Ma-ni-nect, his x mark. (L.S.)

Pich-kan, his x mark. (L.S.)

Pouh-que, his x mark. (L.S.)

Eye-eya, his x mark. (L.S.)

Kam-kus, his x mark. (L.S.)

Sim-yo, his x mark. (L.S.)

Kas-la-chin, his x mark. (L.S.)

Pio-sho-she, his x mark. (L.S.)

Mop-pa-man, his x mark. (L.S.)

Sho-es, his x mark. (L.S.)

Ta-mo-lits, his x mark. (L.S.)

Ka-lim, his x mark. (L.S.)

Ta-yes, his x mark. (L.S.)

Was-en-was, his x mark. (L.S.)

E-yath Kloppy, his x mark. (L.S.)

Paddy, his x mark. (L.S.)

Sto-quin, his x mark. (L.S.)

Charley-man, his x mark. (L.S.)

Ile-cho, his x mark. (L.S.)

Pate-cham, his x mark. (L.S.)

Yan-che-woc, his x mark. (L.S.)

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Ya-toch-la-le, his x mark. (L.S.)

Alpy, his x mark. (L.S.)

Pich, his x mark. (L.S.)

William, his x mark. (L.S.)

Peter, his x mark. (L.S.)

Ischa Ya, his x mark. (L.S.)

George, his x mark. (L.S.)

Jim, his x mark. (L.S.)

Se-ya-las-ka, his x mark. (L.S.)

Ha-lai-kola, his x mark. (L.S.)

Pierro, his x mark. (L.S.)

Ash-lo-wash, his x mark. (L.S.)

Paya-tilch, his x mark. (L.S.)

Sae-pa-waltcha, his x mark. (L.S.)

Shalquilkey, his x mark. (L.S.)

Wa-qual-lol, his x mark. (L.S.)

Sim-kui-kui, his x mark. (L.S.)

Wacha-chiley, his x mark. (L.S.)

Chi-kal-kin, his x mark. (L.S.)

Squa-yash, his x mark. (L.S.)

Sha Ka, his x mark. (L.S.)

Keaui-sene, his x mark. (L.S.)

Che-chis, his x mark. (L.S.)

Sche-noway, his x mark. (L.S.)

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Scho-ley, his x mark. (L.S.)

We-ya-thley, his x mark. (L.S.)

Pa-leyathley, his x mark. (L.S.)

Keyath, his x mark. (L.S.)

I-poth-pal, his x mark. (L.S.)

S. Kolps, his x mark. (L.S.)

Walimtalin, his x mark. (L.S.)

Tash Wick, his x mark. (L.S.)

Hawatch-can, his x mark. (L.S.)

Ta-wait-cla, his x mark. (L.S.)

Patoch Snort, his x mark. (L.S.)

Tachins, his x mark. (L.S.)

Comochal, his x mark. (L.S.)

Passayei, his x mark. (L.S.)

Watan-cha, his x mark. (L.S.)

Ta-wash, his x mark. (L.S.)

A-nouth-shot, his x mark. (L.S.)

Hanwake, his x mark. (L.S.)

Pata-la-set, his x mark. (L.S.)

Tash-weict, his x mark. (L.S.)

Wescha-matolla, his x mark. (L.S.)

Chle-mochle-mo, his x mark. (L.S.)

Quae-tus, his x mark. (L.S.)

Skuilts, his x mark. (L.S.)

Panospam, his x mark. (L.S.)

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Stolameta, his x mark. (L.S.)

Tamayechotote, his x mark. (L.S.)

Qua-losh-kin, his x mark. (L.S.)

Wiska Ka, his x mark. (L.S.)

Che-lo-tha, his x mark. (L.S.)

Wetone-yath, his x mark. (L.S.)

We-ya-lo-cho-wit, his x mark. (L.S.)

Yoka-nolth, his x mark. (L.S.)

Wacha-ka-polle, his x mark. (L.S.)

Kon-ne, his x mark. (L.S.)

Ash-ka-wish, his x mark. (L.S.)

Pasquai, his x mark. (L.S.)

Wasso-kui, his x mark. (L.S.)

Quaino-sath, his x mark. (L.S.)

Cha-ya-tema, his x mark. (L.S.)

Wa-ya-lo-chol-wit, his x mark. (L.S.)

Flitch Kui Kui, his x mark. (L.S.)

Walcha Kas, his x mark. (L.S.)

Watch-tla, his x mark. (L.S.)

Enias, his x mark. (L.S.)

Signed in presence of - -

Wm. C. McKay, secretary of treaty, O.T.

R. R. Thompson, Indian agent.

R. B. Metcalfe, Indian sub-agent.

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C. Mespotie.

John Flett, interpreter.

Dominick Jondron, his x mark, interpreter.

Mathew Dofa, his x mark, interpreter.

Footnotes

A Ratified Mar. 8, 1859.

FNB Proclaimed Apr. 18, 1859.

FNC Cession of lands to the United States.

FND Boundaries.

FNE Reservation.

FNF Boundaries.

FNG Whites not to reside thereon unless, etc.

FNH Bands to settle thereon within a year.

FNI Another reservation to be selected in lieu of this, if, etc.

FNJ Rights and privileges secured to Indians.

FNK See Art. 1, treaty of Nov. 1, 1865.

FNL Proviso in case any band does not accede to this treaty.

FNM Allowance for improvements if, etc.

FNN Payments by the United States.

FNO How to be expended.

FNP $50,000 additional to be expended for buildings, etc.

FNQ United States to erect sawmills, school-house, etc.

FNR To furnish farmer, mechanics, physician, etc.

FNS To erect dwelling houses, etc., for head chiefs.

FNT Successor of head chief to take them.

FNU Lands may be allotted to individual Indians for permanent homes.

FNV Patents to issue therefor; conditions thereof.

FNW Restrictions not to be removed without, etc.

FNX Patent may be cancelled.

FNY Annuities of Indians not to pay debt of individuals.

FNZ Bands to preserve friendly relations.

FNAA To pay for depredations.

FNBB Not to make war, except, etc.

FNCC Annuities to be withheld from those drinking liquor to excess.

FNDD Roads, etc., may be made through reservation.

FNEE When treaty to take effect.

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EXHIBIT 2

The Confederated Tribes of Warm Springs
Ceded Lands and Property

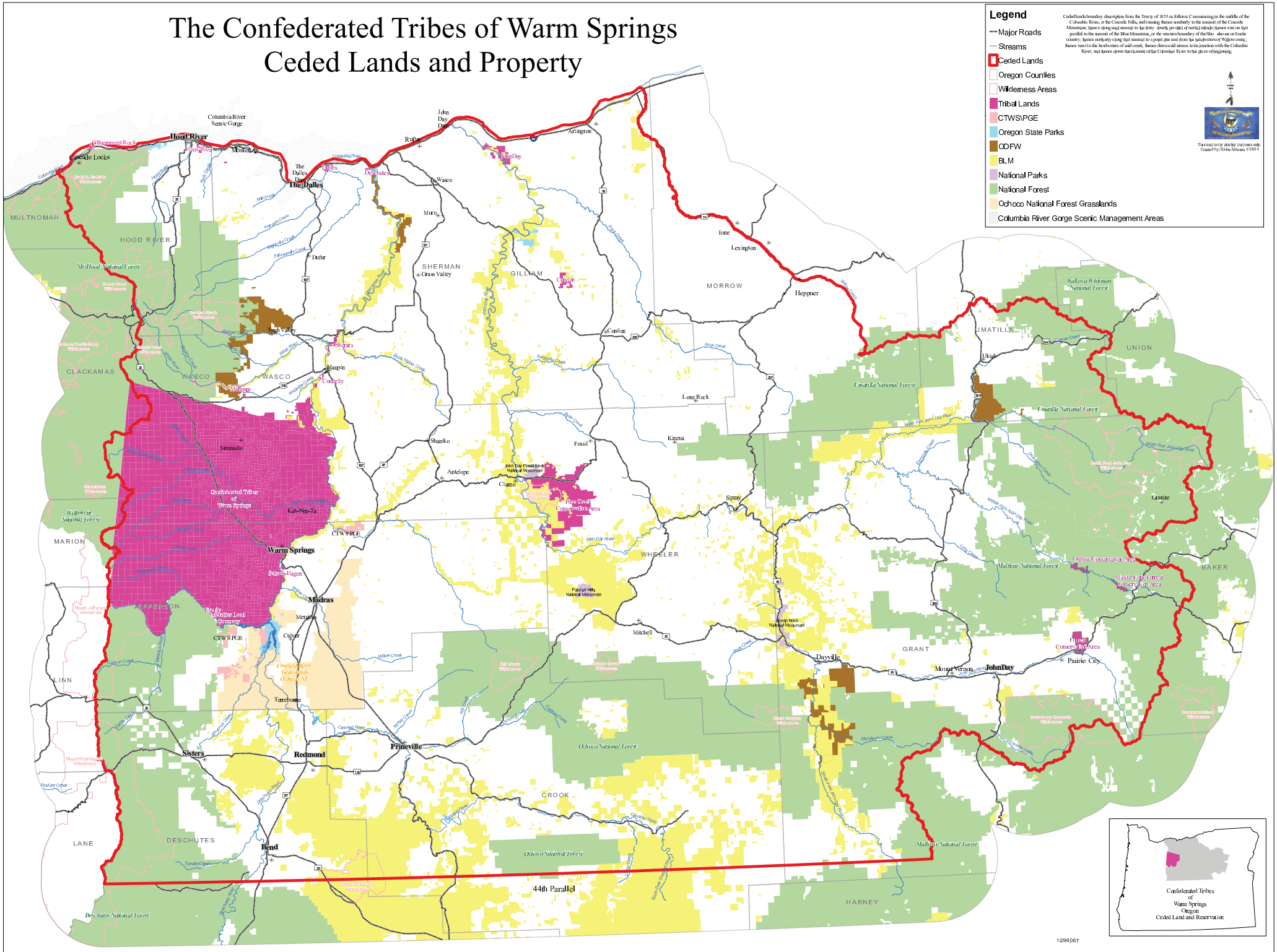


Exhibit 2

EXHIBIT 3

This LONG-TERM GLOBAL SETTLEMENT AND COMPENSATION AGREEMENT, is dated as of April 12, 2000 (this "Agreement"), and is by and among The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act (the "Tribes"), the United States Department of the Interior, acting by and through the Secretary of the United States Department of the Interior (collectively, "Interior"), and Portland General Electric Company, an Oregon corporation ("PGE"). (The Tribes, Interior and PGE are each referred to individually herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378);

WHEREAS, the Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934;

WHEREAS, pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over tribal lands and resources within the boundaries of the Warm Springs Indian Reservation of Oregon (the "Tribal Lands") as such reservation is described in that certain Treaty between the United States of America and the Tribes and Bands of Middle Oregon executed June 25, 1855 (12 Stat. 963);

WHEREAS, PGE is an electric utility engaged in generating, transmitting and distributing electric energy to approximately 700,000 retail customers in the State of Oregon;

WHEREAS, the Tribes and PGE are parties to an agreement, dated December 22, 1955, as amended February 16, 1961 (the "1955 Agreement"), attached hereto as Exhibit A;

WHEREAS, pursuant to the 1955 Agreement, (a) the Tribes granted PGE certain easements and rights necessary to the construction and operation of (i) the Pelton Dam and the Round Butte Dam and the generation and transmission facilities associated therewith and (ii) the Pelton Reregulating Dam, and (b) (i) the compensation to be paid to the Tribes by PGE for such easements and rights was established and (ii) certain rights of the Tribes, including the right of the Tribes to construct, operate and maintain generation facilities in the Pelton Reregulating Dam were also established or affirmed;

WHEREAS, pursuant to the 1955 Agreement, and the license for Project No. 2030 as granted and amended by the Federal Power Commission (predecessor of the Federal Energy Regulatory Commission) ("FERC"), (a) PGE constructed, operates and maintains (i) the Pelton Dam, the Round Butte Dam and the generation and transmission

facilities associated therewith and (ii) the Pelton Reregulating Dam, and (b) the Tribes constructed, operate and maintain the generation facilities in the Pelton Reregulating Dam and the transmission facilities associated therewith. (The Pelton Dam, the Round Butte Dam and the generation and transmission facilities associated therewith, together with the Pelton Reregulating Dam and the generation facilities therein, and all related facilities and licenses are collectively referred to herein as "Project No. 2030");

WHEREAS, the Tribes and PGE are co-licensees of the Original License (as defined below) for Project No. 2030, "to the extent of their interests", and such Original License expires December 31, 2001, and if FERC has not issued a new long-term license by that date, then it will issue annual licenses to the Tribes and PGE as co-licensees until the issuance of such new license;

WHEREAS, pursuant to Section 10(e) ("Section 10(e)") of the Federal Power Act, as amended (the "Federal Power Act") (16 U.S.C. 803(e)), FERC is authorized, with the approval of the Indian tribe having jurisdiction of such lands, (a) to fix a reasonable annual charge for use of tribal lands used by a FERC-licensed hydroelectric project and (b) to readjust such charge periodically during the term of such license;

WHEREAS, the Tribes and PGE have in the past disagreed about the appropriate level of compensation to be paid to the Tribes by PGE pursuant to the 1955 Agreement and Section 10(e), and these disagreements led to disputes between the Tribes and PGE before various arbitration panels, FERC, the United States District Court for the District of Oregon, the United States Court of Appeals for the Ninth Circuit and the Warm Springs Tribal Court;

WHEREAS, the Parties entered into a Settlement Agreement dated February 6, 1985 (the "1985 Settlement Agreement"), attached hereto as Exhibit B, which resolved their then-existing disputes and established the compensation to be paid to the Tribes by PGE through December 31, 2001;

WHEREAS, as required by Section 15 of the Federal Power Act (16 U.S.C. 808) and the FERC regulations thereunder (18 C.F.R. 16.6), on December 9, 1996, PGE filed a notice of intent to file an application for a new FERC license for Project No. 2030 effective at the end of the current license. On December 28, 1998, pursuant to FERC regulations (18 C.F.R. 16.8) PGE initiated second-stage consultation for its application by circulating its draft application for such new license to the Tribes and to the appropriate federal, state and local agencies, and to certain nongovernmental organizations. On December 16, 1999 PGE filed its final application for a new FERC license for Project No. 2030 effective at the end of the current license. As required by these same provisions, on December 26, 1996, the Tribes filed a notice of intent to file a competing application for such Project No. 2030 license. On April 5, 1999 the Tribes initiated second-stage consultation for its application by circulating its draft application for such new license to PGE and to the appropriate federal, state and local agencies, and to certain nongovernmental organizations. On December 17, 1999 the Tribes filed their final application for a new FERC license for Project No. 2030 effective at the end of the current license;

WHEREAS, on March 11, 1998, the Tribal Council of the Tribes enacted Ordinance No. 77, titled "Hydroelectric Licensing and Regulation Ordinance" (the "Tribes' Hydroelectric Ordinance") relating to the development and operation of hydroelectric projects affecting the Warm Springs Reservation and off-reservation reserved interests;

WHEREAS, pursuant to various sections of the Federal Power Act, FERC has authority to impose conditions on original and subsequent licenses for hydroelectric projects subject to its jurisdiction;

WHEREAS, pursuant to Section 4(e) ("Section 4(e)") of the Federal Power Act, (16 U.S.C. 797(e)) the Secretary of the Interior has authority to require FERC to include in hydroelectric licenses within reservations of the United States such conditions as the Secretary deems necessary for the adequate protection and utilization of such reservations;

WHEREAS, the Tribes and PGE desire, subject to the terms and conditions provided in this Agreement, to enter into a long-term comprehensive agreement in order to (a) provide for their respective rights and obligations with respect to Project No. 2030 from and after the Effective Date of this Agreement, including all manner and means of consideration of any kind to be provided to the Tribes in connection with Project No. 2030 and PGE's activities related thereto for the duration of the new long-term FERC license for such project, (b) minimize the potential for future disagreements between them with respect to Project No. 2030 arising from the matters addressed in this Agreement, including with respect to such consideration, (c) avoid the incremental expenses and damage to their relationship which could result from a continued contest between them as to which of them should become the new licensee for Project No. 2030 at the expiration of the current license term and (d) settle all existing disputes, controversies and Claims (as defined below) between them;

WHEREAS, the Tribes have expressed the desire to acquire an ownership interest in the Pelton and Round Butte Facilities (as defined below) in lieu of cash or other consideration including all manner and means of consideration of any kind to be provided to the Tribes in connection with Project No. 2030 and PGE's activities related thereto for the duration of the new long-term FERC license for such project;

WHEREAS, if PGE transfers such ownership interest to the Tribes pursuant to this Agreement in lieu of cash or other consideration of any kind to be provided to the Tribes including all manner and means of consideration of any kind to be provided to the Tribes in connection with Project No. 2030 and PGE's activities related thereto for the duration of the new long-term FERC license for such project, the Tribes have agreed to provide to PGE the assurances set forth in this Agreement that the Tribes will not seek under any circumstances, and will be legally unable to seek in any forum, any other or further consideration in connection with Project No. 2030 and PGE's activities related thereto other than that which is expressly provided for in this Agreement;

WHEREAS, to achieve these objectives, the Tribes and PGE have negotiated in good faith for several years the potential terms and conditions of such a long-term comprehensive agreement, and the Tribes and PGE believe this Agreement will achieve such objectives;

WHEREAS, the members of the Tribes by vote at an election held March 28, 2000, ratified the terms of this Agreement;

WHEREAS, Interior, acting to fulfill its trust responsibility to the Tribes and its authorities under the Federal Power Act on behalf of the Tribes, has determined that this Agreement is in the Tribes' interest; and

NOW THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

(1) "1955 Agreement" has the meaning set forth in the recitals hereof.

(2) "1985 Settlement Agreement" has the meaning set forth in the recitals hereof.

(3) "Additional Compensation" means any Compensation beyond that described in Article V of this Agreement.

(4) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect control with, such Person. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(5) "Agreement" has the meaning set forth in the introductory paragraph hereof.

(6) "Applicable Law" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any tribal government, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

(7) "Asset Purchase Agreement" means the Asset Purchase Agreement, effective as of the Transfer Date, between the Tribes and PGE, attached hereto as Exhibit C.

(8) "Business Day" means any day other than Saturday, Sunday, a legal holiday or a day on which banking institutions in Portland, Oregon are authorized by law or other governmental action to close.

(9) "Claimable Event" means a non-fortuitous event for which insurance is generally available commercially and that results in demonstrated bodily or personal injury or property damage.

(10) "Claims" means liabilities, obligations, losses, damages, penalties, claims (including without limitation claims involving liability in tort, strict liability or otherwise), actions, suits, judgments, costs, expenses and disbursements (including without limitation attorney fees and expenses) of any kind and nature whatsoever without any limitation as to amount.

(11) "Clean Water Act" means 33 U.S.C. 1251 et seq.

(12) "Closing" shall have the meaning set forth in Section 11.8.

(13) "Closing Date" means the date which is the later of (a) two (2) Business Days following the date upon which all of the conditions to each of the Parties' respective obligations hereunder as set forth in Article XI shall have been satisfied or waived or (b) such other date as the Parties may mutually agree and upon which the Closing actually takes place.

(14) "Compensation" means the transfer relative to Project No. 2030, directly or indirectly, of any consideration from PGE to the Tribes or any of its members, or to Interior for the benefit of the Tribes or any of its members, or to any third party for the benefit of the Tribes or any of its members, but does not include:

(i) Any payment to the Tribes or its members for damages or injury to persons or property of their members resulting from a Claimable Event as defined above;

(ii) Any payments to the Tribes for damages resulting from a breach by PGE of this Agreement or any of the Included Agreements;

(iii) Any payments to the Tribes or its members for damages or injury to persons or property of their members resulting from any negligent operation by PGE of the Transmission Facilities;

(iv) Any payments to the Tribes or its members for services rendered which are not required to be performed by the Tribes or its members pursuant to this Agreement, but which are nevertheless requested in writing by PGE;

(v) The costs of implementing FERC Licensing Orders (as defined below);

(vi) The payment of any fee described in Section 5.9(f);

(vii) The payment of any penalty described in Section 5.9(i);

(viii) Any payment(s) to the Tribes or its members for damages to Treaty Reserved Rights;

(ix) Any payment to the Tribes or its members resulting from the criminal misconduct of PGE, its officers, employees and agents or from other misconduct of PGE, its officers, employees and agents which results from an express intention to damage the Tribes or its members.

Notwithstanding Section 1.1(14)(v) above, "Compensation" does include the costs specified in Section 5.10(e) as being borne exclusively by the Tribes and for which the Tribes are to reimburse PGE pursuant to Section 10.3(d) if PGE pays them initially.

(15) "Effective Date" means the date of execution of this Agreement by all Parties hereto.

(16) "Endangered Species Act" means 16 U.S.C. 1531 et seq.

(17) "Escrow Agent" means the agent appointed pursuant to the Escrow Agreement.

(18) "Escrow Agreement" means the Escrow Agreement, dated as of the Closing Date, between the Tribes and PGE, attached hereto as Exhibit I providing for the release to the Tribes of the conveyances for the Undivided 33.33% Interest on December 31, 2001, subject to payment of the purchase price therefor as provided in the Asset Purchase Agreement.

(19) "Federal Power Act" has the meaning set forth in the recitals hereof.

(20) "FERC" has the meaning set forth in the recitals hereof.

(21) "FERC Approval" has the meaning set forth in Section 10.1(a).

(22) "FERC Licensing Orders" means all orders issued by FERC related to Project No. 2030.

(23) "Final Order" means an order of any regulatory body having jurisdiction over a matter and for which there is no longer any opportunity for administrative or judicial review of such order.

(24) "First Purchase Option" has the meaning set forth in Section 5.6(a).

(25) "Fish and Wildlife Coordination Act" means 16 U.S.C. 661 et seq.

(26) "Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or any Native American tribal council or similar governing entity.

(27) "Included Agreements" means the Asset Purchase Agreement, the Escrow Agreement, the Ownership and Operation Agreement and the Mutual General Release.

(28) "Interior" has the meaning set forth in the introductory paragraph hereto.

(29) "Investment Grade" means a rating (as measured by either Standard & Poor's or Moody's, or if neither is available, a rating from an alternate rating source selected by PGE and reasonably acceptable to the Tribes) of the long-term, unsecured, senior debt not supported by third-party credit enhancement of the Person in question equal or superior to BBB- (Standard & Poor's) or Baa3 (Moody's).

(30) "Mutual General Release" means the Mutual General Release, dated as of the Closing Date, between the Tribes and PGE, in the form attached hereto as Exhibit E.

(31) "Net Book Value of Pelton and Round Butte Facilities" means the original cost of the Pelton and Round Butte Facilities reflected on PGE's books of account from time to time, including additions, improvements, betterments, work in progress, property held for future use in connection with the Pelton and Round Butte Facilities (including all property purchased or otherwise acquired in connection with PGE's efforts to obtain a new or renewed license from FERC for Project No. 2030) and all costs incurred in connection with PGE's efforts to obtain a new or renewed license from FERC for Project No. 2030 (including fees and expenses of attorneys and consultants)), less accumulated depreciation as reflected on PGE's books of account from time to time. "Net Book Value of Pelton and Round Butte Facilities" shall also include the reasonable and necessary costs incurred by the Tribes, and reimbursed by PGE, to obtain the New FERC License (as defined below) with respect to the Pelton and Round Butte Facilities (as defined below), but not those costs incurred with respect to the Reregulating Dam Generating Facilities (as defined below).

(32) "New FERC License" means the first long-term (not annual) license for Project No. 2030 to be issued by FERC following the expiration of the Original License and any annual licenses to be sought jointly by the Tribes and PGE as co-licensees.

(33) "New License Expiration Date" means the date on which the New FERC License (including any annual licenses granted by FERC prior to the issuance of a third long-term license) for Project No. 2030 expires.

(34) "New License Term" means the period from the effective date of the New FERC License through the New License Expiration Date.

(35) "OPUC" means the Oregon Public Utility Commission.

(36) "OPUC Approval" has the meaning set forth in Section 10.1(c).

(37) "Original License" means the original fifty (50) year license, as amended, for Project No. 2030 issued by FERC with an expiration date of December 31, 2001, plus all annual licenses issued by FERC prior to issuance of the New FERC License.

(38) "Other Transmission Lines" means all transmission lines and equipment that are part of the Pelton and Round Butte Facilities, other than those lines and equipment related exclusively to the transmission of power generated by the Reregulating Dam Generating Facilities.

(39) "Ownership and Operation Agreement" means the Agreement for Ownership and Operation of the Pelton and Round Butte Dams and Generating Facilities, dated as of the Closing Date and to be effective as of the Transfer Date, between the Tribes and PGE, in the form attached hereto as Exhibit D.

(40) "Parties" or "Party" have the meanings set forth in the introductory paragraph hereto.

(41) "Pelton Reregulating Dam" means the dam downstream of Pelton Dam constructed by PGE simultaneously with the construction of Pelton Dam and designed to reregulate the flow of water in the Deschutes River after its release from Pelton Dam.

(42) "Pelton and Round Butte Facilities" means Project No. 2030 minus the Reregulating Dam Generating Facilities and the Transmission Facilities.

(43) "Person" means any natural person, corporation, general partnership, limited partnership, proprietorship, limited liability company, other business organization, trust, union, association or Governmental Authority.

(44) "PGE" has the meaning set forth in the introductory paragraph hereto.

(45) "PGE Personnel and Invitees" has the meaning set forth in Section 4.10.

(46) "Proceedings" has the meaning set forth in Section 13.3 (a).

(47) "Project No. 2030" has the meaning set forth in the recitals hereof.

(48) "Project Use Rights" means those rights expressly granted to PGE by the Tribes pursuant to Article IV.

(49) "Reregulating Dam Generating Facilities" means the electrical generating facilities installed by the Tribes in the Pelton Reregulating Dam, plus those transmission lines and equipment related exclusively to the transmission of power by such generating facilities.

(50) "Round Butte Switching Station 230 kV Main Bus" means the bus identified in the diagram attached hereto as Exhibit J.

(51) "SEC" has the meaning set forth in Section 10.1(f).

(52) "SEC Approval" has the meaning set forth in Section 10.1(f).

(53) "Second Purchase Date" has the meaning set forth in Section 5.6(b).

(54) "Second Purchase Option" has the meaning set forth in Section 5.6(b).

(55) "Secretary" means the Secretary of the Department of the Interior.

(56) "Section 4(e)" has the meaning set forth in the recitals hereof.

(57) "Section 10(e)" has the meaning set forth in the recitals hereof.

(58) "State Water Right" has the meaning set forth in Section 10.1(e).

(59) "Stated Term" means the period specified in the New FERC License as the term of such license. The "Stated Term" shall not include any annual license periods that follow the specified or implied expiration date of such license.

(60) "Term" means the term of this Agreement as provided in Article XII.

(61) "Transfer Date" means the date upon which has occurred both the satisfaction of the Escrow Conditions and delivery of the Escrow Documents (as such terms are defined in the Escrow Agreement) pursuant to Section 3(a) of the Escrow Agreement.

(62) "Transmission Facilities" means the 230 kV transmission line from the Round Butte Dam to the Bethel Substation in Salem, Oregon, plus (x) the appurtenant facilities identified by the boxes enclosed by red broken lines in the diagram attached hereto as Exhibit J and (y) an undivided 28% interest in the Round Butte Switching Station 230 kV Main Bus (as defined above).

(63) "Treaty" means the treaty of June 25, 1855, between the Tribes and Bands of Middle Oregon and the United States of America. (12 Stat. 963)

(64) "Treaty Reserved Rights" means the rights of the Tribes to hunt, fish, gather roots and berries, and pasture livestock reserved in the Treaty, and the Tribes' implied rights to water to support these rights as such implied rights are defined from time to time by applicable federal law.

(65) "Tribes" has the meaning set forth in the introductory paragraph hereof.

(66) "Tribal Lands" has the meaning set forth in the recitals hereof.

(67) "Tribes' Hydroelectric Ordinance" has the meaning set forth in the recitals hereof.

(68) "Undivided 33.33% Interest" has the meaning set forth in Section 5.1.

(69) "Undivided 16.66% Interest" has the meaning set forth in Section 5.6(a).

(70) "Undivided .02% Interest" has the meaning set forth in Section 5.6(b).

1.2 Interpretations.

In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (g) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h)"including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II
TREATY RESERVED RIGHTS

2.1 Importance of Treaty Reserved Rights.

The Parties recognize and acknowledge the importance to the Tribes of the Treaty Reserved Rights and the fact that these Treaty Reserved Rights are the subject of a trust relationship between the Tribes and the United States. The Parties do not intend for any part of this Agreement to impair the protection of the Tribes' Treaty Reserved Rights.

2.2 No Waivers Related to Treaty Reserved Rights Claims.

Interior does not by this Agreement waive any of the Secretary's rights or duties to protect, preserve and maintain the Tribes' Treaty Reserved Rights. The Tribes do not by this Agreement waive any Claim(s) against PGE they may have for any harm to Treaty Reserved Rights which may occur after the Effective Date. Moreover, the Tribes also do not release or waive any Claims for damages to Treaty Reserved Rights to the extent, and only to the extent, both (a) the damages are incurred by the Tribes subsequent to the Effective Date and (b) the acts or omissions by PGE giving rise to such Claims (x) had occurred or were continuing to occur as of the Effective Date (y) or occurred after the Effective Date. PGE does not by this Agreement waive any defenses it may have against any such Claims.

ARTICLE III
SETTLEMENT AND RELEASE OF CLAIMS

In reliance upon the representations, warranties, covenants and agreements of each of the Parties as set forth herein and (a) in the case of PGE, in consideration for the Project Use Rights granted to PGE by the Tribes as set forth in Article IV hereof, and (b) in the case of the Tribes, for the consideration to be provided to the Tribes by PGE as set forth in Section 4.5 and Article V hereof, each of the Parties agrees that:

3.1 Settlement.

This Agreement and the Included Agreements are intended fully, finally and irrevocably to:

(a) resolve any disputes and contests between the Tribes and PGE regarding who should obtain the New FERC License;

(b) establish the terms upon which PGE will transfer certain interests in Project No. 2030 to the Tribes;

(c) establish the respective rights and obligations of the Tribes and PGE with respect to Project No. 2030 and their activities related thereto, including but not limited to: (i) Treaty Reserved Rights, (ii) use of Tribal Lands with respect to Project No. 2030, (iii) consideration to be paid by PGE to the Tribes with respect to such use of Tribal Lands, Project No. 2030 and all of PGE's activities related to such project, (iv) the Tribes' and PGE's joint application to FERC for the New FERC License, (v) ownership interests in Project No. 2030 and exercise of the respective rights of the owners of Project No. 2030 and (vi) the exercise by the Tribes of their authority within the scope of their jurisdiction as provided in Article VI ; and

(d) resolve any and all other disputes between the Tribes and PGE as of the Effective Date excluding comments by Interior and the Tribes on PGE's draft application for the New FERC License.

3.2 Release of Claims.

At the Closing, (a) all past and present Claims by the Tribes or PGE arising in any way out of the 1955 Agreement or the 1985 Settlement Agreement existing as of the Effective Date and (b) all past and present Claims by the Tribes or PGE arising from any other source existing as of the Effective Date shall be released and waived by each of PGE and the Tribes by the execution of the Mutual General Release. Notwithstanding the foregoing, the Tribes pursuant to such Mutual General Release do not release or waive any Claims for damages to the extent, and only to the extent, both (x) the damages are incurred by the Tribes subsequent to the Effective Date and (y) the acts or omissions by PGE giving rise to such Claims had occurred and were continuing to occur as of the Effective Date.

3.3 Status of 1955 Agreement and Section 10(e) Payments Derived from the 1985 Settlement Agreement.

The 1955 Agreement and the Section 10(e) payments derived from the 1985 Settlement Agreement shall continue in full force and effect until the Transfer Date. Effective upon the Transfer Date, the 1955 Agreement and the Section 10(e) payments derived from the 1985 Settlement Agreement shall terminate and be superseded in their entirety by this Agreement.

ARTICLE IV
GRANT OF RIGHTS TO PGE

As of the Transfer Date and continuing throughout the New License Term, the Tribes hereby grant to PGE, its successors and assigns, and hereby consent to the grant by Interior to PGE, its successors and assigns of, the rights provided in this Article IV. To the extent the rights so granted are the same as rights granted by the Tribes to PGE in the 1955 Agreement and the 1985 Settlement Agreement, the grant and consent provided for in the immediately foregoing sentence shall constitute renewals and reaffirmations of the rights granted by the 1955 Agreement and the 1985 Settlement Agreement. As of the Transfer Date, and to the extent legally required, Interior, with the consent of the Tribes, hereby grants to PGE, its successors and assigns, the rights provided in this Article IV.

4.1 Easements for Dams and Equipment.

The Tribes hereby grant, and consent to the grant by Interior, to PGE, its successors and assigns, easements and rights as follows:

(a) An easement and the right to use so much of the Tribal Lands on the westerly side of the Deschutes River and as much of the river bed as may be owned by the Tribes at the site of the Pelton Dam in Sections 13 and 24, Township 10 south, Range 12, E.W.M., and Sections 18 and 19, Township 10 south, Range 13, E.W.M., in Jefferson County, Oregon, to such an extent as may reasonably be necessary for PGE to operate and maintain (and rebuild if necessary) thereon a dam approximately 205 feet in height, together with penstocks, side channels, tunnels, spillways, a powerhouse located immediately downstream from the said dam, substations, switching stations, buildings, structures, transmission lines and distribution lines, together with poles, wires and appurtenances of any kind or nature which may be necessary or useful in connection with the generation, transformation, transmission and distribution of electric energy from the Pelton and Round Butte Facilities, and located as shown on the maps attached hereto as Schedule 4.1(a). The location of the Pelton Dam and powerhouse is also shown on the map attached hereto as Schedule 4.1(a).

(b) An easement and the right to use so much of the Tribal Lands on the westerly side of the Deschutes River and so much of the river bed as may be owned by the Tribes at the site of the Pelton Reregulating Dam in Sections 1 and 12, Township 10 south, Range 12, E.W.M., Jefferson County, Oregon, and located as shown on the maps

attached hereto as Schedule 4.1(b). The location of the Pelton Reregulating Dam is also shown on the map attached hereto as Schedule 4.1(b).

(c) An easement and the right to use so much of the Tribal Lands on the westerly side of the Deschutes River and so much of the river bed as may be owned by the Tribes at the site of the Round Butte Dam in Section 22, Township 11 south, Range 12, E.W.M., Jefferson County, Oregon, to such an extent as may be reasonably necessary for PGE to operate and maintain (and rebuild if necessary) thereon a dam approximately 440 feet in height, but which in no event will raise the elevation at the reservoir behind such dam above the elevation of 1950 feet above mean sea level U.S.C. & G.S. datum, together with penstocks, side channels, tunnels, spillways, a powerhouse located immediately downstream from the said dam, substations, switching stations, buildings, structures, transmission lines and distribution lines, together with poles, wires and appurtenances of any kind or nature which may be necessary or useful in connection with the generation, transformation, transmission and distribution of electric energy from the Pelton and Round Butte Facilities and located as shown on the maps attached hereto as Schedule 4.1(c). The location of the Round Butte Dam and powerhouse is also shown on the map attached hereto as Schedule 4.1(c).

4.2 Flowage Easements.

The Tribes grant to PGE, its successors and assigns, and consent to the grant by Interior, the following flowage easements:

(a) The right to use of Tribal Lands on the westerly side of the Deschutes River and such lands adjacent to any tributaries thereof, for the purpose of a reservoir behind the Pelton Dam as hereinabove described, and the right to flood said lands up to an approximate elevation of 1585 feet above mean sea level, U.S.C.&G.S. datum and which said land is situated in Sections 24, 25, 26, 35 and 36, Township 10 south, Range 12, E.W.M., Sections 2, 10, 11, 15 and 22 in Township 11 south, Range 12, E.W.M., Sections 7 and 18, Township 10 south, Range 12.5, E.W.M., and Sections 18 and 19 in Township 10 south, Range 13, E.W.M. in Jefferson County, Oregon as shown on the maps attached hereto as Schedule 4.1(a).

(b) The right to the use of Tribal Lands on the westerly side of the Deschutes River and such lands adjacent to any tributaries thereof, for purposes of a reservoir behind the Pelton Reregulating Dam in connection with Project No. 2030 as hereinbefore described, and the right to flood said lands up to an approximate elevation of 1440 feet above mean sea level, U.S.C. & G.S. datum, and which lands are situated in Sections 1, 12 and 13 in Township 10 south, Range 12, E.W.M., and Sections 18 and 19 in Township 10 south, Range 13, E.W.M., in Jefferson County, Oregon, as shown on the maps attached hereto as Schedule 4.1(b).

(c) The right to use of Tribal Lands on the westerly side of the Deschutes River and westerly and northerly banks of the Metolius River and Tribal Lands adjacent to the tributaries of either of said rivers, for purposes of a reservoir not exceeding 1950 feet above mean sea level, U.S.C. & G.S. datum, behind the Round Butte Dam, and

which lands are situated on the westerly bank of the Deschutes River and the westerly and northerly banks of the Metolius River, and adjacent to the tributaries of either river, in Sections 21, 22, 27, 28, 29 and 30 in Township 11 south, Range 12 E.W.M., Sections 18, 19, 20, 21, 22, 23, 25, 26, 27, 28 and 29 in Township 11 south, Range 11 E.W.M. in Jefferson County, Oregon, as shown on the map attached hereto as Schedule 4.1(c).

4.3 Easements for Transmission Facilities and Other Transmission Lines.

The Tribes hereby grant, and consent to the grant by Interior, to PGE, its successors and assigns, easements and rights as follows:

An easement and right of way over and across the Tribal Lands from the Round Butte switching station adjacent to the Round Butte Dam in a general northwesterly direction to the westerly boundary of the Warm Springs Reservation as shown in part on Schedule 4.1(c) to be used for the purpose of the operation and maintenance (and rebuilding if necessary) of the Transmission Facilities or such other connections as may be necessary or useful, and an easement and right of way over and across Tribal Lands from the Pelton powerhouse to the Round Butte powerhouse as shown in part on Schedule 4.3 to be used for the purpose of the operation and maintenance (and rebuilding if necessary) of Other Transmission Lines between said powerhouses, together with any substations, switching stations, poles, wires, and appurtenances of any kind or nature which may be necessary or useful in connection with the operation or maintenance (and rebuilding if necessary) of said Other Transmission Lines, together with the present and future right to cut or trim danger trees within a distance of 200 feet on each side of the centerline of said right of way, a danger tree being a tree, growing or dead, which because of its condition, location or size might in PGE's judgment constitute a hazard to the Transmission Facilities or Other Transmission Lines. Both of the foregoing rights of way for said Transmission Facilities and Other Transmission Lines shall extend 100 feet on each side of the center line thereof.

It is understood and agreed by the Parties that PGE shall have the right to go upon the Tribal Lands and make surveys to determine the location of said transmission rights of way.

4.4 Easement for Access Roads.

The Tribes hereby grant to PGE, its successors and assigns, and consent to the grant by Interior of, an easement across the Tribal Lands to the extent that the same may be necessary or convenient for access roads to and from the Pelton and Round Butte Facilities and Transmission Facilities, it being understood that said roads shall be located at such places as will not interfere with any present structures placed on said Tribal Lands by the Tribes. It is further understood and agreed that the Tribes may have the right to use any and all roads so constructed, operated or maintained by PGE for constructing, operating and maintaining the Pelton and Round Butte Facilities and the Transmission Facilities.

Upon construction of any roads across fenced land, PGE agrees to place cattle guards at all places where any fence is opened for such road. Upon cessation of use of any such road or abandonment thereof by PGE, PGE shall notify the Tribes, and PGE agrees to replace the fence at such road opening and remove said cattle guards if requested in writing to do so by the Tribes.

4.5 Payments for Timber Cut or Removed.

It is understood and agreed by the Parties that if it is necessary for PGE in (a) the operation or maintenance (and rebuilding if necessary) of the Transmission Facilities or Other Transmission Lines, (b) the inundation of any areas or (c) the construction, operation or maintenance of access roads pursuant to Section 4.4, to cut or remove any timber or trees situated on the Tribal Lands, then PGE agrees to pay to the Tribes, or their duly authorized agent, the value of the said standing timber, logs or trees thereby cut or removed, including any value of immature trees. In the event of any dispute arising as to the amount or value of such trees or timber so cut or removed, then the Parties agree that an independent cruiser or log scaling company agreeable to both the Tribes and PGE may be called upon to determine the value of any such timber, trees or logs removed therefrom, and the finding of such independent cruiser or scaling company shall be final and binding upon the Parties to this Agreement, except as hereinafter provided. Payment for any such timber shall be made by PGE to the Tribes within thirty (30) days after the removal of the same, or if the price therefor is to be determined by an independent cruiser or log scaling company, then such payment shall be made within thirty (30) days after the determination by such independent cruiser or scaling company, provided always that in lieu of the obligation of PGE to pay for such timber, logs or trees, if the Tribal Council shall so elect, the timber, logs or trees referred to in this Section 4.5 shall be sold by the Tribes.

4.6 Access for Other Project Purposes.

The Tribes hereby grant to PGE, its successors and assigns access across Tribal Lands to the extent that the same may be necessary or convenient for all other purposes related to the operation and maintenance of the Pelton and Round Butte Facilities, specifically including activities related to the performance of studies involving Project No. 2030. PGE agrees to provide the Tribes' Secretary-Treasurer reasonable advance notice of its intent to go upon Tribal Lands to perform studies and to provide to the Tribes all the data collected in the course of performing such studies.

4.7 Rights Limited to Tribal Lands; Assistance with Respect to Other Lands.

The rights granted or consented to by the Tribes to PGE pursuant to this Agreement cover lands or property held in trust by the United States for the benefit of the Tribes or otherwise owned by the Tribes as Tribal Lands, and this Agreement grants no rights over or across lands or property which may be beneficially or otherwise owned by any individual member or members of the Tribes in his or her own right. The Tribes agree, however, that they shall make reasonable efforts to assist PGE in securing on reasonable terms such rights over or across lands or property which may be beneficially

or otherwise owned by any individual member or members of the Tribes in his or her own right and which are necessary or useful to the generation of power from the Pelton and Round Butte Facilities and the transmission of such power by the Transmission Facilities and Other Transmission Lines.

4.8 Use of Reservoir Pools by the Tribes and Members of the Tribes.

Insofar as it shall not conflict with the operation or maintenance (and rebuilding if necessary) of the Pelton and Round Butte Facilities, or be in violation of any Applicable Law, the Tribes and members of the Tribes shall have the right to the continued use of the respective pools behind the Pelton Dam, Round Butte Dam and Reregulating Dam.

4.9 Agreement Rights Attached to the Land.

It is understood and agreed that this Agreement shall be binding upon the successors and assigns of PGE as an owner of the Pelton and Round Butte Facilities and the Transmission Facilities and attached to the land and shall be binding upon the successors in interest of the Tribes. It is understood and agreed that the easements granted by this Article IV shall run with the ownership of the Pelton and Round Butte Facilities and the Transmission Facilities and that such rights shall be segregable between the Pelton and Round Butte Facilities and the Transmission Facilities. In the event that either the Pelton facilities, the Round Butte facilities or the Transmission Facilities are sold, transferred or conveyed by PGE in accordance with Section 14.2 hereof, or acquired by process of eminent domain by persons other than PGE, then the obligations of PGE to the Tribes shall cease and terminate as to such facilities and become an obligation of the successors in interest of PGE as to the respective facilities herein described.

4.10 Quiet Enjoyment; Reservation of Rights by Tribes.

PGE shall, as between it and the Tribes, Interior and any Person claiming by or through the Tribes or Interior, be entitled to the full, unrestricted and quiet enjoyment of all the Project Use Rights granted to it under this Agreement, including all reasonable and necessary access and use by PGE and PGE's officers, employees, agents, Affiliates, suppliers, contractors, subcontractors, licensees, invitees and permitted successor and assigns (such Persons are hereinafter referred to as "PGE Personnel and Invitees"). The Parties intend that this Agreement shall not limit or restrict the Tribes' governmental powers over Persons other than PGE and PGE Personnel and Invitees, except as such limitations or restrictions may be required by terms of this Agreement or PGE's Project Use Rights, or except as necessary to comply with the terms of the Original FERC License, the New FERC License or the State Water Right, as applicable. The Parties further intend that this Agreement shall not limit or restrict the Tribes' governmental powers over PGE and PGE Personnel and Invitees with respect to activities not reasonably contemplated by this Agreement and the Included Agreements. The Parties specifically understand and agreed as follows:

(a) Except as provided otherwise in this Agreement, the Included Agreements or any applicable license issued by FERC or the State of Oregon, and only to

the extent not inconsistent with and not impairing or interfering in any way with PGE's use of the Project Use Rights under this Agreement (including impairment by interference with the operation or maintenance, and rebuilding if necessary, of the Pelton and Round Butte Facilities and the Transmission Facilities or causing undue hazard in connection with such facilities) the Tribes shall retain the following rights to the extent such rights exist and do not conflict with federal law, including but not limited to the United States Constitution, federal common law and acts of the United States Congress:

(i) All rights of every kind, other than Project Use Rights, in the Tribal Lands for which the Project Use Rights are granted;

(ii) The right to permit use of all Tribal Lands for which Project Use Rights are granted for any purposes not inconsistent with the use thereof by PGE, it being understood that the generation of hydroelectric power would be inconsistent with the use thereof by PGE;

(iii) The right to exclude from all Tribal Lands for which Project Use Rights are granted any Person other than PGE and PGE Personnel and Invitees;

(iv) All mining rights in all Tribal Lands for which Project Use Rights are granted not inconsistent with PGE's use thereof;

(v) Upon the termination of the Project Use Rights hereunder and PGE's interests in the FERC License for Project No. 2030, the Tribes shall possess their full right to occupy all such Tribal Lands and exclude any nonmembers from such lands, including PGE and PGE Personnel and Invitees;

(vi) All regulatory authority over all Tribal Lands for which Project Use Rights are granted, with respect to hunting, fishing, camping, boating and all other recreational activities as specified in Article VI;

(vii) Police power and adjudicatory authority relative to Persons other than PGE and PGE Personnel and Invitees over all Tribal Lands for which Project Use Rights are granted;

(viii) All traffic control authority over any and all access roads for which Project Use Rights are granted;

(ix) Police power and adjudicatory authority over PGE and PGE Personnel and Invitees with respect only to activities not reasonably contemplated by this Agreement and the Included Agreements.

(b) The Project Use Rights granted by the Tribes under this Article IV are not intended and should not be construed as conveyances of a fee interest in any Tribal Lands. The Tribes' grant of Project Use Rights under this Article IV is not perpetual and shall terminate in the event of any termination occurring under Article XII herein, or at

such time as PGE and its permitted successors and assigns are no longer a licensee for Project No. 2030.

(c) In the event of any conflict between this Section 4.10 and any other express provision of this Agreement, such express provision shall control.

(d) Disputes over the exercise of tribal powers referred to in this Article shall be resolved in accordance with Article XIII of this Agreement.

4.11 Other Rights Necessary to the Operation of Project No. 2030.

If the Tribes acquire, or are otherwise determined to possess, non-consumptive water rights necessary to the operation of Project No. 2030, the Tribes grant PGE the right to use such water rights but only in connection with the operation of Project No. 2030. Except as provided in this section, this Agreement does not limit the Tribes' right to use its water rights, including those set forth in Article IV of the Water Rights Settlement Agreement dated November 17, 1997, between the Tribes, the State of Oregon and the United States.

ARTICLE V
COMPENSATION TO THE TRIBES

For the period from the Effective Date through the Transfer Date, PGE shall continue to compensate the Tribes pursuant to the terms of the 1955 Agreement and the 1985 Settlement Agreement. Effective upon the Transfer Date, PGE's obligations to compensate the Tribes pursuant to the 1955 Agreement and the 1985 Settlement Agreement shall cease and PGE shall provide to the Tribes the exclusive Compensation described below in this Article V.

5.1 Sale of Certain Interests in Project No. 2030.

At the price and on the other terms and subject to the conditions set forth in the Asset Purchase Agreement, PGE shall sell and the Tribes shall purchase on the Transfer Date an undivided 33.33% interest in the Pelton and Round Butte Facilities (the "Undivided 33.33% Interest") as they shall exist on the Transfer Date.

5.2 Ownership and Operation Agreement.

At the Closing, PGE and the Tribes shall execute the Ownership and Operation Agreement with the Tribes to be effective as of the Transfer Date.

5.3 Operation of Generating Unit in Pelton Reregulating Dam.

The Tribes shall retain the exclusive right to operate and maintain (and rebuild if necessary) at the expense of the Tribes one hydroelectric generating unit in the Pelton Reregulating Dam with suitable structures, accessories and appurtenances located as

determined by mutual agreement of the Tribes and PGE. The amounts of water to be released either through the gates in the Pelton Reregulating Dam or through such hydroelectric generating unit and the water levels of the reservoir behind such dam shall be determined by PGE consistent with the terms of the New FERC License and other regulatory requirements. To the extent not inconsistent therewith, PGE shall give consideration so far as possible to such generation by the Tribes provided that in doing so PGE shall not be required to compromise generation from the Pelton and Round Butte Facilities.

5.4 Excess Hatchery Fish.

To the extent the Round Butte hatchery continues as a part of the terms and conditions of the New FERC License, fish trapped at the Pelton trap that are in excess of the number needed for the hatchery program or other aspects of the long-term fisheries program required under the New FERC License shall be provided to the Tribes for their use.

5.5 Employment of Members of the Tribes.

To the extent not prohibited by Applicable Law, PGE shall use its best efforts to afford all reasonable opportunities for employment to qualified members of the Tribes in connection with the operation and maintenance (and rebuilding if necessary) of the Pelton and Round Butte Facilities and Transmission Facilities. Such opportunities include the conduct of studies carried out in connection with Project No. 2030.

5.6 Options to Purchase Additional Interests.

(a) PGE hereby grants the Tribes the option to purchase ("First Purchase Option"), as of 2400 hours Pacific time on December 31, 2021, an undivided 16.66% interest in the Pelton and Round Butte Facilities as such facilities exist as of such date (the "Undivided 16.66% Interest"). PGE may revoke such First Purchase Option in its sole discretion at any time prior to and including January 2, 2021 if this Agreement (a) is breached in any material way by the Tribes or (b) ceases to remain in full force and effect. The Tribes may exercise this First Purchase Option by written notice to PGE no sooner than January 2, 2019 and no later than July 1, 2021; if the Tribes do not exercise the First Purchase Option by July 1, 2021, then it shall expire. In the event the Tribes exercise this First Purchase Option, PGE shall sell the Undivided 16.66% Interest to the Tribes, and the Tribes shall purchase such interest from PGE, upon the same terms and conditions as those contained in the Asset Purchase Agreement, subject only to the following modifications:

(i) the time of closing, transfer of title and payment of the purchase price shall be 2400 hours Pacific time on December 31, 2021;

(ii) the Purchased Assets, as defined in the Asset Purchase Agreement, purchased by the Tribes shall be the Undivided 16.66% Interest in the Pelton and Round Butte Facilities as such facilities exist as of 2400 hours Pacific time on December 31, 2021; and

(iii) the Purchase Price, as defined in the Asset Purchase Agreement, shall be .2498 times PGE's Ownership Share of the Net Book Value of the Pelton and Round Butte Facilities as of 2400 hours Pacific time on December 31, 2021, as reflected on PGE's books of account as of that time.

(b) PGE hereby grants the Tribes the option to purchase ("Second Purchase Option"), as of the Second Purchase Date (as defined below), an undivided .02% interest in the Pelton and Round Butte Facilities as such facilities exist as of such Second Purchase Date (the "Undivided .02% Interest"). PGE may revoke such Second Purchase Option in its sole discretion at any time prior to and including the date one year prior to the Second Purchase Date if this Agreement (a) is breached in any material way by the Tribes or (b) ceases to remain in full force and effect. The Tribes may exercise this Second Purchase Option by written notice to PGE no sooner than three years prior to the Second Purchase Date and no later than one year prior to the Second Purchase Date; if the Tribes do not exercise the Second Purchase Option by the date one year prior to the Second Purchase Date, then it shall expire. In the event the Tribes exercise this Second Purchase Option, PGE shall sell the Undivided .02% Interest to the Tribes, and the Tribes shall purchase such interest from PGE, upon the same terms and conditions as those contained in the Asset Purchase Agreement, subject only to the following modifications:

(i) the date of closing, transfer of title and payment of the purchase price shall be the Second Purchase Date and shall be determined by application of the following formula:

$$\text{"Second Purchase Date"} = \text{July 1, 2014} + \frac{(AL + ST)}{2}$$

Where AL = the number of years (rounded to one decimal place) from January 1, 2002 to the date FERC issues the New FERC License and

ST = the Stated Term.

provided, however, that the Second Purchase Date shall be at 2400 hours Pacific time on the December 31or June 30 closest to the date arrived at by application of the foregoing formula (or if not a Business Day, then the next Business Day thereafter) and provided, further, that in no event shall the Second Purchase Date be a date later than the earlier of (A) 2400 hours Pacific time on December 31, 2036 and (B) the date that is one year prior to the end of the Stated Term;

(ii) the Purchased Assets, as defined in the Asset Purchase Agreement, purchased by the Tribes shall be the Undivided .02% Interest in the Pelton and Round Butte Facilities as such facilities exist as of the Second Purchase Date; and

(iii) the Purchase Price, as defined in the Asset Purchase Agreement, shall be .0004 times PGE's Ownership Share of the Net Book Value of the Pelton and Round Butte Facilities as of the Second Purchase Date, as reflected on PGE's books of account as of that date.

(c) The Tribes' exercise of the First Purchase Option and the Second Purchase may be advanced to an earlier date as provided in Section 12.3 of the Ownership and Operation Agreement. In the event such advancement occurs, then the date of closing, transfer of title and payment of the purchase price, as well as the Purchased Assets (as defined in the Asset Purchase Agreement) and the Purchase Price (as defined in the Asset Purchase Agreement) shall all be as determined pursuant to such Section 12.3 of the Ownership and Operation Agreement.

5.7 Payments Specifically for Transmission Rights of Way.

For the rights of way for the Transmission Facilities and Other Transmission Lines, as described in Section 4.3, and for roads and other access used in connection with the operation and maintenance (and rebuilding if necessary) of the Transmission Facilities and Other Transmission Lines and for any other areas reasonably necessary which PGE desires to keep clear of growing trees, PGE shall pay a monthly rental of one dollar and fifty cents ($1.50) per acre for such area, but in any event the said area shall include a width of not less than 100 feet on each side of the center line of the transmission lines. In addition, PGE shall compensate the Tribes for timber cut or removed as provided in Section 4.5.

5.8 Transmission Service for Tribes.

If the Tribes elect pursuant to Section 5.10 of the Ownership and Operation Agreement to take for direct consumption or marketing the Tribes' Ownership Share of the Project Rights (as these terms are defined in the Ownership and Operation Agreement) of the Pelton and Round Butte Facilities, PGE shall respond to any request from the Tribes for transmission services by offering the Tribes transmission services in accordance with PGE's tariff for such services then on file with FERC, at the prices and terms and upon the conditions contained therein.

5.9 Sole and Exclusive Means of Compensation.

The Tribes and Interior acknowledge that PGE would not enter into this Agreement if this Agreement did not provide and incorporate the sole and exclusive means by which PGE shall provide Compensation to the Tribes for any and all of PGE's activities, and the impacts thereof, in any way connected, directly or indirectly, with Project No. 2030. The Tribes and Interior expressly agree that the Compensation to be received by the Tribes from PGE as set forth in the foregoing sections of this Article V shall represent full and complete Compensation to the Tribes for PGE's ownership and operation of the Pelton and Round Butte Facilities and the Transmission Facilities, and the impacts thereof, including:

(a) All the Project Use Rights granted by the Tribes as described in Article IV hereof;

(b) All of PGE's actual and potential obligations to the Tribes pursuant to Section 10(e);

(c) All of PGE's actual and potential obligations to provide Compensation to the Tribes pursuant to the potential license conditions described in Section 5.10(e)(i)-(vii);

(d) Any and all taxes of any possible form which the Tribes might impose upon PGE including, but not limited to, income, ad valorem, property, generation, BTU or energy, fuel, sales, use, gross receipts, privilege, business, occupation, severance, first use, conservation, transmission, consumption, excise, lease and transaction taxes;

(e) Any and all assessments of any possible form which the Tribes might impose upon PGE, its property or its activities;

(f) Any and all permit and other fees of any possible form which the Tribes might impose upon PGE, its property or its activities, other than fees charged PGE by the Tribes which (i) are pursuant to the Tribes' administration of the Clean Water Act or other federal acts pursuant to similar delegations of federal authority to regulate, (ii) represent reasonable costs incurred by the Tribes to administer such Act or acts and (iii) are no higher than similar fees charged by the United States and the State of Oregon to other Persons under such Act or acts;

(g) Any and all uses whatsoever of the Tribes' water rights necessary for the operation of Project No. 2030, whether or not such uses are consumptive;

(h) All forms of Compensation to the Tribes currently contemplated, or which may in the future be contemplated, by the Tribes' Hydroelectric Ordinance;

(i) Any and all penalties of any possible form which the Tribes might impose upon PGE, its property or its activities, other than any such penalties which (i) are pursuant to the Tribes' administration of the Clean Water Act and the Tribes' administration of other federal acts pursuant to similar delegations of federal authority to regulate and (ii) are no higher than similar penalties assessed by the United States or the State of Oregon to other Persons under such Act or acts; and

(j) any and all other potential bases for and forms of Compensation to the Tribes connected in any possible way to PGE's activities related to Project No. 2030, the Tribes and the Warm Springs Reservation of Oregon.

5.10 Costs to Comply with Provisions of FERC Licensing Orders.

All costs incurred by PGE and the Tribes during the New License Term to comply with FERC Licensing Orders shall be borne by PGE and the Tribes as provided in this Section 5.10.

(a) PGE agrees to bear exclusively all costs related solely to the operation or existence of the Transmission Facilities, including the costs of complying with all FERC Licensing Orders related thereto.

(b) The Tribes agree to bear exclusively all costs related solely to operation or existence of the Pelton Reregulating Dam Generating Facilities, including the costs of complying with all FERC Licensing Orders related thereto.

(c) The Tribes and PGE agree to bear exclusively as Costs of Operation pursuant to the Ownership and Operation Agreement all costs related solely to operation or existence of the Pelton Dam or the Round Butte Dam, including the costs of complying with all FERC Licensing Orders related thereto.

(d) All costs incurred by PGE and the Tribes during the New License Term to comply with FERC Licensing Orders, other than costs described in Section 5.10(a), (b) and (c) above, shall be allocated between (x) the Pelton and Round Butte Facilities and (y) the Pelton Reregulating Dam Generating Facilities as follows:

(i) The Pelton and Round Butte Facilities shall bear 98% of such costs; and

(ii) The Pelton Reregulating Dam Generating Facilities shall bear 2% of such costs.

(e) Except as provided otherwise in Section 5.10(a), (b), (c) and (d) and this Section 5.10(e), all costs incurred by PGE and the Tribes during the New License Term to comply with FERC Licensing Orders related to Interior's exercise of its authority under federal law, including but not limited to the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act, to (i) assure the adequate protection and utilization of the Warm Springs Reservation of Oregon and (ii) protect, mitigate and enhance natural resources affected by Project No, 2030 (including but not limited to fish, wildlife, cultural and recreational resources), shall be treated as Costs of Operation (as defined in the Ownership and Operation Agreement) and shall be shared by PGE and the Tribes pursuant to the Ownership and Operation Agreement. The Tribes agree that they will bear exclusively, and that PGE shall therefore not be required to share or bear pursuant to the Ownership and Operation Agreement or otherwise, all costs related to Interior's exercise of its authority under federal law, including but not limited to the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act, to (x) assure the adequate protection and utilization of the Warm Springs Reservation of Oregon and (y) protect, mitigate and enhance natural resources affected by Project No, 2030 (including but not limited to fish, wildlife, cultural and recreational resources), which exercise of such authority:

(i) Requires the payment of money to the Tribes or members of the Tribes, or to any Person for the purpose of facilitating a payment of money either to the Tribes or members of the Tribes or;

(ii) Both (A) requires the purchase, lease or other form of acquisition of property of whatever kind (real, personal, intangible or otherwise), and the transfer or dedication of such property to the Tribes or members of the Tribes, or to any Person for the purpose of facilitating such a transfer or dedication of property either to the Tribes or members of the Tribes or the transfer or dedication of property owned by PGE to the Tribes or members of the Tribes, or to any Person for the purpose of facilitating such transfer or dedication of property either to the Tribes or members of the Tribes and (B) exceeds an aggregate total of one million dollars ($1 million) during the Term of this Agreement;

(iii) Requires the employment of the Tribes or members of the Tribes (in either case, whether or not to perform studies or other work related to Project No. 2030);

(iv) Arises in any way from a determination by the Secretary that the Compensation received by the Tribes pursuant to this Agreement is in any way inadequate, whether relative to Section 10(e) or otherwise;

(v) Is designed both (A) to reduce the potential amount or value of generation from the Pelton and Round Butte Facilities and (B) to increase the potential amount or value of generation from the Reregulating Dam Generating Facilities;

(vi) Requires development, construction or creation of new facilities, or improvements to or additions to existing facilities which facilities in either case (A) are not designed to address impacts of Project No. 2030 on natural resources, including land, (B) are not required to be open generally to the general public and (C) are not directly related to operation of Project No. 2030; or

(vii) Involves mitigation (whether in the form of consideration to be granted to the Tribes or members of the Tribes, or to any Person for the purpose of facilitating a payment of money either to the Tribes or members of the Tribes, or some other form) for impacts on the Warm Springs Reservation of Oregon caused by activities which (A) take place outside the boundaries of the Warm Springs Reservation of Oregon, (B) are not directly related either to the operation of Project No. 2030 or recreation activities sponsored by Project No. 2030, and (C) are undertaken by Person(s) who are neither Parties to this Agreement, nor Affiliates of one of the Parties.

5.11 PGE's Remedies if Additional Taxes or Fees Paid.

If (a) the Tribes impose taxes or fees which are otherwise prohibited by the terms of Article V or Article X or would have been prohibited if not found invalid and (b) PGE elects to pay such taxes or fees, then, as non-exclusive remedies therefor, PGE shall be

entitled to (x) schedule the Tribes' Ownership Share of Project Rights (as such terms are defined in the Ownership and Operation Agreement) and receive the benefit thereof until PGE has been fully reimbursed on account of such taxes or fees and (y) offset any such amounts against any and all obligations PGE may have to the Tribes until such amounts have been fully reimbursed.

5.12 Reservation of Interior Authority.

Interior reserves all authority it has under federal law, including but not limited to the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act, to (i) assure the adequate protection and utilization of the Warm Springs Reservation of Oregon and (ii) protect, mitigate and enhance natural resources affected by Project No. 2030 (including but not limited to fish, wildlife, cultural and recreational resources), and nothing in this Agreement limits Interior's exercise of such authority.

5.13 PGE's Remedies if Additional Compensation Imposed by Interior.

(a) In the event Interior seeks to impose, or FERC accepts an Interior recommendation to impose, any condition(s) on the New FERC License which would require any modification of the ownership of the Pelton and Round Butte Facilities at any time or which would require PGE to pay the Tribes Additional Compensation, PGE may do any or all of the following:

(i) challenge legally the conditions so imposed by Interior or FERC;

(ii) pay the Additional Compensation and achieve reimbursement as provided in Section 5.13(b);

(iii) reject the New FERC License as provided in Section 12.8; and

(iv) pursue any other remedies available by law.

Interior does not waive any defenses available to it to respond to any such action taken by PGE.

(b) If (i) Interior imposes conditions on the New FERC License which require PGE to pay the Tribes Additional Compensation (whether directly or indirectly), or FERC imposes such conditions upon Interior's recommendation, and (ii) PGE elects to pay such Additional Compensation and (iii) the Tribes fail to reimburse PGE immediately for any and all such amounts paid by PGE as required by Section 9.3(d), then, as non-exclusive remedies therefor, PGE shall be entitled to (x) schedule the Tribes' Allocation (as such term is defined in the Ownership and Operation Agreement) and receive the benefits thereof until PGE has been fully reimbursed and (y) offset such past due amounts against any and all obligations it may have to the Tribes until such amounts have been fully reimbursed.

ARTICLE VI
NATURAL RESOURCE REGULATION AND MANAGEMENT BY THE TRIBES

6.1 Powers.

(a) Pursuant to the Constitution referenced in the recitals hereof, the Tribes in their governmental capacity exercise certain governmental powers over natural resources on Tribal Lands. In particular, the Constitution empowers the Tribal Council, among other things, "(t)o prohibit the overgrazing of lands or other depletion of the capital or natural resources of the Tribe by ordinances which shall be subject to approval by the Secretary of the Interior" and "(t)o regulate the uses and disposition of tribal property; to protect and preserve the tribal property, wild life and natural resources...". The Parties agree that these powers are not constrained by this Agreement and the Included Agreements, except as specifically set forth in this Agreement and the Included Agreements and except as the exercise of such governmental powers may be constrained by federal law, including but not limited to the United States Constitution, federal common law and Acts of the United States Congress. In the event of any conflict between this Article VI and any other express provision of this Agreement, such express provision shall control.

6.2 Specific Tribal Ordinances.

PGE and the Tribes agree that the following Tribal ordinances regulating natural resources on Tribal Lands shall apply to their activities on such lands related to Project No. 2030, except as otherwise specifically set forth in this Agreement and the Included Agreements, except as necessary to comply with the terms of the Original FERC License, the New FERC License or the State Water Right, as applicable, and except as the application of such ordinances is in conflict with federal law, including but not limited to the United States Constitution, federal common law and Acts of the United States Congress:

(a) Warm Springs Tribal Code Chapter 340 "Fishing Code";

(b) Warm Springs Tribal Code Chapter 350 "Hunting and Trapping Code";

(c) Warm Springs Tribal Code Chapter 411 "Zoning and Land Use Code";

(d) Warm Springs Tribal Code Chapter 432 "Water Quality Standards, Beneficial Uses, and Treatment Criteria";

(e) Warm Springs Tribal Code Chapter 433 "Implementing Provisions for Tribal Water Quality Standards, Beneficial Uses, and Treatment Criteria";

(f) Warm Springs Tribal Code Chapter 460 "Range and Livestock Ordinance";

(g) Warm Springs Tribal Code Chapter 475 "Hydroelectric Licensing and Regulation Ordinance";

(h) Warm Springs Tribal Code Chapter 490 "Protection and Management of Archaeological, Historical and Cultural Resources";

(i) Tribal Integrated Resources Management Plans I and II;

(j) Warm Springs Management Plan;

(k) Warm Springs Flood Damage Prevention Ordinance #77;

(l) Warm Springs Tribal Code Chapter 401 "Warm Springs Wild & Scenic Rivers Act"; and

(m) Warm Springs Water Management Plan – Tribal Resolution No. 2980.

6.3 New Regulations and Amendments to Existing Regulations.

The Tribes agree that prior to adopting new regulations or ordinances, or amending existing regulations or ordinances, that in any case could potentially affect Project No. 2030, the Tribes shall fully consult with PGE and take into consideration any and all concerns identified by PGE. The Tribes further agree that they will not effect any new regulation or ordinance, or amendment to an existing regulation or ordinance, that creates economic burdens on Project No. 2030 unless either: (a) PGE has given its consent, (b) such economic burdens are less than or equal to like burdens which would be imposed on Project No. 2030 by another Governmental Authority in the absence of regulation by the Tribes or (c) the Tribes commit to bear individually the entire cost of such additional economic burdens.

6.4 Exercise of Delegated Authority.

PGE acknowledges that the Tribes have been delegated certain regulatory authority under the Clean Water Act and that the Tribes may be delegated similar authority in the future pursuant to other congressional acts. The Parties agree that except to the extent the Tribes' exercise of such delegated regulatory authority would be inconsistent with this Agreement, the Included Agreements, the Original FERC License, the New FERC License or the State Water Right, the provisions of this Agreement shall not constrain the Tribes' exercise of such delegated regulatory authority. The costs related to the Pelton and Round Butte Facilities of complying with the Tribes' exercise of such delegated regulatory authority shall be treated as Costs of Operation under the Ownership and Operation Agreement.

6.5 Conflict with Other Provisions.

In the event of conflict between the provisions of this Article VI and any other provisions of this Agreement or the Included Agreements, such other provisions of this Agreement or the Included Agreements shall control.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF PGE

As a material inducement to the Tribes to enter into this Agreement, PGE hereby represents and warrants to the Tribes as follows:

7.1 Corporate Existence of PGE.

PGE is a corporation duly incorporated, validly existing under the laws of the State of Oregon. PGE has heretofore made available to the Tribes complete and correct copies of its articles of incorporation, as amended, and bylaws (or other comparable corporate charter documents), as currently in effect.

7.2 Authority.

PGE has full corporate power and authority to execute and deliver this Agreement and the Included Agreements, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by PGE of this Agreement and the Included Agreements, and the performance by PGE of its obligations hereunder and thereunder, have been duly and validly authorized by the Board of Directors of PGE, and no other corporate action on the part of PGE or its shareholder is necessary. This Agreement has been duly and validly executed and delivered by PGE and, subject to receipt of FERC Approval, OPUC Approval and SEC Approval, constitutes, and upon the execution and delivery by the Tribes and PGE of the Included Agreements, such Included Agreements will constitute, legal, valid and binding obligations of PGE enforceable against PGE in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

7.3 No Conflicts.

The execution and delivery by PGE of this Agreement, the execution and delivery by PGE of the Included Agreements, the performance by PGE of its obligations under this Agreement and the Included Agreements and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation, as amended, or bylaws, as amended (or other comparable corporate charter documents) of PGE,

(b) require any consent, approval, authorization or permit, or filing with or notification to any Governmental Authority, except for (i) FERC Approval, OPUC Approval, SEC Approval and the approval specified in Section 10.1(e) and (ii) those requirements which become applicable to PGE as a result of the specific regulatory status of the Tribes (or any of its Affiliates) or as a result of any other facts that specifically

relate to the business or activities in which the Tribes (or any of its Affiliates) are or are proposed to be engaged;

(c) result in a default (or give rise to any right of termination, cancellation or acceleration or require any consent or approval) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which PGE is a party or by which PGE may be bound, except for such defaults (or rights of termination, cancellation or acceleration or any consent or approval) as to which requisite waivers or consents have been obtained; or

(d) conflict with or result in any violation or breach of any term or provision of any law or order applicable to PGE.

7.4 Legal Proceedings.

Except as disclosed in Schedule 7.4 hereto, there are no actions or proceedings pending or, to the knowledge of PGE, threatened against, relating to or affecting PGE with respect to the ownership, operation or maintenance of the Pelton and Round Butte Facilities which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Included Agreements.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES OF THE TRIBES AND INTERIOR

8.1 Representations and Warranties of the Tribes.

As a material inducement to PGE to enter into this Agreement, the Tribes hereby represent and warrant to PGE as follows:

(a) Tribal Existence. The Tribes are a federally recognized Indian tribe duly and validly organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378). The Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934. Pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over Tribal Lands within the boundaries of the Warm Springs Indian Reservation as described in that certain Treaty between the United States and the Tribes and Bands of the Middle Oregon executed June 25, 1855. The Tribes have heretofore made available to PGE complete and correct copies of their constitution, bylaws and corporate charter, as currently in effect.

(b) Statutory Authorization. This Agreement, specifically including the grants of the Project Use Rights described in Article IV hereof, is authorized pursuant to

25 U.S.C. § 2, and Sections 4(e) and 10(e)(1) of the Federal Power Act (16 U.S.C. § 797(e) and § 803(e)(1)). In addition, Interior has approved the Agreement pursuant to 25 U.S.C. Section 81, as amended by Public Law 106-179, the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (See Exhibit K). To the extent the Transmission Facilities are at any time not included within the description of Project No. 2030 for purposes of the FERC license for Project No. 2030 or any other portion of the Tribal Lands described in Article IV is not at any time included within the project boundary described in the FERC license, the grants of the Project Use Rights described in Article IV are approval by the General Right-of-Way Act of 1948, 25 USC 323-328.

(c) Authority. The Tribes have full power and authority to enter into this Agreement and the Included Agreements to which they are a party, to perform their obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Tribes of this Agreement and the Included Agreements, and the performance by the Tribes of their obligations hereunder and thereunder, have been duly and validly authorized by the members of the Tribes and the Tribal Council of the Tribes and no other tribal action on the part of the Tribes is necessary. To the best of the Tribes' knowledge and belief, the execution and delivery by the Tribes of this Agreement and the Included Agreements, and the performance by the Tribes of their obligations hereunder and thereunder, have been duly and validly authorized by Interior, and no other action by Interior is necessary to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by the Tribes. Assuming this Agreement has been duly and validly executed and approved by Interior and, subject to receipt of FERC Approval and OPUC Approval, this Agreement constitutes, and upon the execution and delivery by the Tribes and PGE of the Included Agreements, such Included Agreements will constitute, legal, valid and binding obligations of the Tribes enforceable against the Tribes in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(d) No Conflicts. The execution and delivery by the Tribes of this Agreement, the execution and delivery by the Tribes of the Included Agreements, the performance by the Tribes of their obligations under this Agreement and the Included Agreements, the consummation of the transactions contemplated hereby and thereby and PGE's exercise of the Project Use Rights and the rights granted PGE under the Ownership and Operation Agreement will not:

(i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the constitution, bylaws or corporate charter of the Tribes;

(ii) require any consent, approval, authorization or permit, or filing with or notification to any Governmental Authority, except for (A) the duly authorized execution and approval of this Agreement by Interior, (B) the FERC Approval, the OPUC Approval and the approval specified in Section 10.1(e), and (C) those requirements which become applicable to

the Tribes as a result of the specific regulatory status of PGE (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which PGE (or any of its affiliates) is or is proposed to be engaged;

(iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Tribes are a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or

(iv) conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribes, including laws or regulations promulgated by the Tribes, including those regulations and ordinances listed in Section 6.2(a)-(m) or any other Tribal environmental, land use planning, zoning or other similar regulation or ordinance.

8.2 Representations and Warranties of the Tribes and Interior.

As a material inducement to PGE to enter into this Agreement, the Tribes and Interior hereby individually and jointly represent and warrant to PGE as follows:

(a) Tribal Lands. The Tribal Lands are held in trust by the United States for the benefit of the Tribes and are not the subject of any other (i) right of way, (ii) easement, (iii) lease, (iv) contract for sale, (v) contract encumbrance or (vi) any other written or oral agreement that is inconsistent with the Project Use Rights granted PGE under this Agreement and all other rights granted PGE under the Ownership and Operation Agreement.

(b) Legal Proceedings. Except as disclosed in Schedule 8.2 hereto,

(i) there are no actions or proceedings pending or, to the knowledge of the Tribes or Interior, threatened against, relating to or affecting the Tribes or any of the Tribal Lands which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Included Agreements; and

(ii) the Tribal Lands are not subject to any existing or threatened adverse claims that are inconsistent with the rights granted PGE under this Agreement and the Included Agreements.

(c) Purposes of the Reservation. The use of the Project Use Rights for hydroelectric power generation, transmission of power and related activities; the execution and delivery by the Tribes of this Agreement and the Included Agreements; the

performance by the Tribes of their obligations under this Agreement and such Included Agreements and the consummation of the transactions contemplated hereby and thereby will not interfere or be inconsistent with the purposes for which the Warm Springs Reservation of Oregon was created.

8.3 Representations and Warranties of Interior.

As a material inducement to PGE to enter into this Agreement, Interior hereby represents and warrants to PGE as follows:

(a) Statutory Authorization. This Agreement, specifically including the grants of the Project Use Rights described in Article IV hereof, is authorized pursuant to 25 U.S.C. § 2, and Sections 4(e) and 10(e)(1) of the Federal Power Act (16 U.S.C. § 797(e) and § 803(e)(1)). In addition, Interior has approved the Agreement pursuant to 25 U.S.C. Section 81, as amended by Public Law 106-179, the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (See Exhibit K). To the extent the Transmission Facilities are at any time not included within the description of Project No. 2030 for purposes of the FERC license for Project No. 2030 or any other portion of the Tribal Lands described in Article IV is not at any time included within the project boundary described in the FERC license, the grants of the Project Use Rights described in Article IV are approved by the General Right-of-Way Act of 1948, 25 USC 323-328.

(b) Authority. This Agreement has been duly authorized, executed, delivered and approved by Interior and no other action on the part of Interior is necessary. Assuming that this Agreement has been duly authorized, executed and delivered by PGE, this Agreement, subject to receipt of the FERC Approval and the OPUC Approval, constitutes a legal, valid and binding obligation of Interior enforceable against Interior in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) Exercise of Trust Responsibility. The execution and approval of the Agreement are consistent with Interior's trust responsibility to the Tribes.

(d) No Conflicts. The execution and delivery by Interior of this Agreement, the performance by Interior of its obligations under this Agreement and the consummation of the transactions contemplated hereby and thereby will not:

(i) require any consent, approval, authorization or permit, or filing with or notification to any Governmental Authority, except for (A) the duly authorized execution and approval of this Agreement by Interior, (B) the FERC Approval, the OPUC Approval and the approval specified in Section 10.1(e), and (C) those requirements which become applicable to the Tribes as a result of the specific regulatory status of PGE (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which PGE (or any of its affiliates) is or is proposed to be engaged; or

(ii) conflict with or result in a violation or breach of any term or provision of any statute, law, regulation or rule, or any judgment, decree or order of any court or Governmental Authority applicable to Interior.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF THE TRIBES AND PGE

As a material inducement to Interior to enter into this Agreement, the Tribes and PGE hereby individually and jointly represent and warrant to Interior as follows:

9.1 Reservation of Interior Authority.

The Tribes and PGE acknowledge that Interior reserves all authority it has pursuant to federal law, including but not limited to the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act, to (i) assure the adequate protection and utilization of the Warm Springs Reservation of Oregon and (ii) protect, mitigate and enhance natural resources affected by Project No, 2030 (including but not limited to fish, wildlife, cultural and recreational resources), and that nothing in this Agreement limits Interior's exercise of such authority.

9.2 The Tribes' Status as Co-owner and Co-licensee.

The Tribes and PGE acknowledge that Interior's exercise of its authorities under federal law, including but not limited to the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act, to (i) assure the adequate protection and utilization of the Warm Springs Reservation of Oregon and (ii) protect, mitigate and enhance natural resources affected by Project No. 2030 (including but not limited to fish, wildlife, cultural and recreational resources) will not be restricted or limited by the circumstance of the Tribes being a co-owner and co-licensee of Project No. 2030.

ARTICLE X
COVENANTS OF THE PARTIES

10.1 Regulatory Approvals.

(a) FERC Approval of this Agreement. Within thirty (30) days after the Effective Date, the Tribes and PGE shall file this Agreement with FERC seeking expedited approval by FERC of this Agreement and, to the extent of FERC's jurisdiction, the transactions contemplated hereby. Such FERC approval ("FERC Approval") shall include:

(i) Approval by FERC of the future transfer of PGE interests to the Tribes pursuant to this Agreement and the Asset Purchase Agreement;

(ii) Approval by FERC that the Compensation to be paid to the Tribes by PGE pursuant to this Agreement shall be the exclusive means of satisfying PGE's obligations to the Tribes pursuant to Section 10(e) for the period beginning upon the Transfer Date and continuing during the full term of any New FERC License, including a waiver by FERC of its authority to re-establish compensation at ten-year intervals under Section 10(e); and

(iii) all other matters within FERC's jurisdiction relating to this Agreement, the Asset Purchase Agreement, the Ownership and Operation Agreement and the transactions contemplated hereby and thereby.

(b) New FERC License. As of the Effective Date, the Tribes and PGE covenant to take no further steps whatsoever to compete for the New FERC License or any other license. From and after the Effective Date, the Tribes and PGE covenant to cooperate to merge their final applications for a New FERC License into a new joint application for a New FERC License with a term of fifty (50) years. PGE and the Tribes intend that such new joint application will be filed as promptly as reasonably possible following receipt of both FERC Approval and OPUC Approval. PGE and the Tribes agree to form a relicensing consensus group, composed of representatives of both, whose task will be to create the new joint application. This relicensing consensus group shall identify differences between the Tribes' and PGE's final applications, with particular emphasis on the Exhibit E mitigation package, and shall work collaboratively to develop common positions that are acceptable to both entities. PGE and the Tribes agree to submit the joint application to Interior for comment for a reasonable period prior to filing it with FERC and to consider any comments made by Interior during such period. PGE and the Tribes also agree that they will continue to utilize an open and cooperative approach with natural resource agencies and groups involved in the Project's relicensing.

(c) OPUC Approval of Property Sales. PGE shall promptly file an application with the OPUC for approval ("OPUC Approval") to (i) transfer utility property to the Tribes pursuant to the Asset Purchase Agreement and (ii) to transfer utility property to the Tribes in the event the Tribes exercise the options described in Section 5.6. The Tribes shall provide such support for such application as PGE may reasonably request.

(d) Pelton and Round Butte Facilities Section 4(e) Conditions. The Tribes and PGE covenant to cooperate fully with each other to obtain Interior's acknowledgment that no Section 4(e) conditions in the New FERC License are necessary or appropriate related to the ownership of Project No. 2030 and that no Section 4(e) condition should be imposed that would result in a term of the New FERC License of less than fifty (50) years.

(e) Oregon Department of Water Resources Approval. From and after the Effective Date, PGE and the Tribes covenant to cooperate fully with each other to seek from the Oregon Department of Water Resources a reauthorized water right ("State Water Right") to replace State Hydroelectric License #222 and State Hydroelectric License #217. PGE and the Tribes shall seek such State Water Right for all of Project No. 2030. Within thirty (30) days after the Effective Date, the Tribes and PGE shall file a joint amendment to their filed notices of intent notifying the Oregon Water Resources Department of their intention to file a joint application for the State Water Right on terms consistent with this Agreement. The Tribes and PGE agree to take no further steps whatsoever to file separate or competing applications for such State Water Right or any other license. Such State Water Right application shall encompass all of Project No. 2030, including the Pelton Reregulating Dam Generating Facilities. It is the goal of PGE and the Tribes that such State Water Right be consistent with the terms of the New FERC License.

(f) SEC Approval of Sale of Utility Assets. PGE shall promptly request, or shall cause Sierra Pacific Resources (which is in the process of acquiring all of the common stock of PGE) to request, from the United States Securities and Exchange Commission ("SEC") approval ("SEC Approval") to (i) sell utility assets to the Tribes pursuant to the Asset Purchase Agreement and (ii) sell utility assets to the Tribes in the event the Tribes exercise the options described in Section 5.6.

10.2 Additional Covenants of PGE.

PGE covenants and agrees with the Tribes that, at all times from and after the Effective Date and continuing throughout the Term of this Agreement, PGE will comply with all covenants and provisions of this Section 10.2, except to the extent the Tribes may otherwise consent in writing.

(a) Regulatory and Other Approvals. PGE will:

(i) (A) take all reasonable steps necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts, as promptly as practicable to obtain all consents, approvals or actions of, to make all filings with and to give all notices to Governmental Authorities provided that the Final Orders of the OPUC and FERC approving (x) the transaction and (y) the terms and conditions of each of the Included Agreements and the respective regulatory treatment of any and all financial impacts thereof in each case shall be in form and substance satisfactory to PGE in its sole discretion and (B) take all reasonable steps necessary or desirable to obtain all consents, approvals or actions, and give all notices to, any other Person required of PGE, in each case, to consummate the transactions contemplated hereby and by the Included Agreements, including the FERC Approval, the OPUC Approval and the SEC Approval;

(ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith; and

(iii) provide reasonable cooperation (A) to the Tribes in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental Authorities or other Persons required of the Tribes to consummate the transactions contemplated hereby and by the Included Agreements and (B) to the Tribes and the Tribes' potential lenders in connection with the Tribes' financing for the transactions contemplated by this Agreement.

Prior to making any filings with a Governmental Authority pursuant to this Section 10.2(a) other than the request for SEC Approval, PGE agrees to provide copies of such filings to the Tribes and Interior. Nothing in this Agreement shall require PGE to institute litigation or to pay or agree to pay any sum of money or make financial accommodations (other than the payment or incurrence of customary expenses and filing or other fees) in order to obtain any necessary consent, approval or authorization, including the FERC Approval, the OPUC Approval and the SEC Approval. PGE will provide prompt notification to the Tribes when any such consent, approval, action, filing or notice referred to in clause (i) above is obtained, taken, made or given, as applicable, and will advise the Tribes of any communications (and, unless precluded by law or order, provide copies of any such communications that are in writing) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement or any of the Included Agreements.

(b) Compensation to the Tribes. Provided PGE has not been required to pay the Tribes Additional Compensation, PGE hereby covenants not to seek, and waives any and all rights it may have to seek, or in any way to obtain, pursuant to Section 10(e) or otherwise, any reduction in the Compensation to be paid by PGE pursuant to Article V of this Agreement for the period from the Effective Date through the New License Expiration Date. Nothing in this Section 10.2 (b) shall prohibit PGE from opposing any attempt to achieve Additional Compensation for the Tribes.

(c) Legal Proceedings. PGE covenants that it will not initiate, prosecute or accept the benefit of any Proceeding in any court, including tribal court, if the purpose or effect of the action would be to invalidate this Agreement or the Included Agreements, or any provision(s) thereof.

10.3 Additional Covenants of the Tribes

The Tribes covenant and agree with PGE that, at all times from and after the Effective Date and continuing throughout the Term of this Agreement, the Tribes will comply with all covenants and provisions of this Section 10.3, except to the extent PGE may otherwise consent in writing.

(a) Regulatory and Other Approvals. The Tribes will:

(i) (A) take all reasonable steps necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts, as promptly as practicable to obtain all consents, approvals or actions of, to make all filings with and to give all notices to Governmental Authorities provided that the Final Order of FERC approving (x) the transaction and (y) the terms and conditions of each of the Included Agreements shall be in form and substance satisfactory to the Tribes in their sole discretion and (B) take all reasonable steps necessary or desirable to obtain all consents, approvals or actions, and give all notices to, any other Person required of the Tribes, in each case, to consummate the transactions contemplated hereby and by the Included Agreements, including the FERC Approval;

(ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith; and

(iii) provide reasonable cooperation to PGE in obtaining the OPUC Approval and all other consents, approvals or actions of, making all filings with and giving all notices to Governmental Authorities or other Persons required of PGE to consummate the transactions contemplated hereby and by the Included Agreements.

Prior to making any filings with a Governmental Authority pursuant to this Section 10.3(a), the Tribes agree to provide copies of such filings to PGE and Interior. Nothing in this Agreement shall require the Tribes to institute litigation or to pay or agree to pay any sum of money or make financial accommodations (other than the payment or incurrence of customary expenses and filing or other fees) in order to obtain any necessary consent, approval or authorization including FERC Approval, OPUC Approval and SEC Approval. The Tribes will provide prompt notification to PGE when any such consent, approval, action, filing or notice referred to in clause (i) above is obtained, taken, made or given, as applicable, and will advise PGE of any communications (and, unless precluded by law or order, provide copies of any such communications that are in writing) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement or any of the Included Agreements.

(b) Compensation to the Tribes. The Tribes hereby covenant not to seek, and waive any and all rights they may have to seek, or in any way to obtain, pursuant to Section 10(e) or otherwise, Additional Compensation from PGE, PGE's customers or PGE's Personnel and Invitees, for PGE's activities contemplated by this Agreement and the Included Agreements for the period from the Effective Date through the New License Expiration Date. The Tribes specifically hereby covenant not to seek Additional Compensation from PGE during such period for intangible rights or impacts thereon, (i) to the extent such rights are not Treaty Reserved Rights and (ii) to the extent any such

impacts do not result from an insurable event as defined by the policies of insurance described in Section 11.2 of the Ownership and Operation Agreement.

(c) No Indirect Compensation. The Tribes covenant that they will not impose or assess any fees, assessments or taxes (including, without limitation, income, sales, use, gross receipts, privilege, business or other taxes) on any Person with respect to any such Person's (i) involvement in the planning, design, permitting, construction, operation or maintenance of any of the Pelton and Round Butte Facilities or the Transmission Facilities or (ii) purchase, transmission or distribution of electric energy produced by the Pelton and Round Butte Facilities.

(d) Additional Compensation Imposed by Interior. To the extent Interior imposes conditions on the New FERC License which require PGE to pay the Tribes any Additional Compensation (whether directly or indirectly), or FERC imposes such condition(s) upon Interior's recommendation, if PGE elects to pay such Additional Compensation, the Tribes covenant and agree to reimburse PGE immediately for any and all such amounts paid by PGE.

(e) Regulations and Ordinances. Except as otherwise provided in Section 6.3, the Tribes hereby covenant not to impose any (i) new environmental, land use planning, zoning or other similar regulations or ordinances, or (ii) amendments to currently existing environmental, land use planning, zoning or other similar regulations or ordinances, in either case that would conflict with use of PGE's Project Use Rights under the terms of this Agreement and the Included Agreements for hydroelectric power generation, transmission of power and related activities or materially impair the value of Project No. 2030. The Tribes also hereby covenant that in exercising the regulatory authorities described in Article VI hereof vis-a-vis Project No. 2030 and PGE, the Tribes will:

(i) Act in a non-discriminatory manner;

(ii) Impose burdens no greater than imposed by the State of Oregon or the United States Environmental Protection Agency under similar regulations;

(iii) Not act with a purpose of negating or subverting any part of this Agreement or the Included Agreements;

(iv) Not require or demand actions compliance with which would result in a violation of the Original FERC License (to the extent it remains in effect), the New FERC License or the State Water Right; and

(v) Not act in a manner that represents an abuse or misuse of Tribal authority.

(f) Legal Proceedings. The Tribes covenant that they will not initiate, prosecute or accept the benefit of any Proceeding in any court, including tribal court, if the purpose or effect of the action would be to invalidate this Agreement or the Included

Agreements, or any provision(s) thereof, and that for as long as this Agreement or any of the Included Agreements shall remain in effect according to their terms, the Tribes will not take any action in any tribal court if a purpose or effect of that action would be to establish or assert jurisdiction of that court over PGE with respect to this Agreement or any of the Included Agreements.

(g) Quiet Enjoyment. Consistent with the provisions of Section 4.10, the Tribes covenant to provide PGE the full, unrestricted and quiet enjoyment of the Project Use Rights.

(h) Funding to Permit Transfer of Undivided 33.33% Interest. The Tribes covenant to make their best efforts to obtain funding to permit them to deliver the Purchase Price (as defined in the Asset Purchase Agreement) to PGE on January 1, 2002, or the first Business Day thereafter. If despite such efforts the Tribes are not able to obtain such funding by January 1, 2002, then The Tribes covenant to continue to make their best efforts to obtain funding to permit them to deliver the Purchase Price to PGE as soon as possible prior to the Outside Date (as defined in the Escrow Agreement).

10.4 Covenants of Interior.

(a) Regulatory and other approval. Interior covenants to provide reasonable cooperation to the Tribes and to PGE in obtaining the FERC Approval and all other consents, approvals or actions of, making all filings with and giving all notices to Governmental Authorities or other Persons required of the Tribes and PGE to consummate the transactions contemplated hereby and by the Included Agreements.

(b) Compensation to the Tribes. Except as it may do so pursuant to its authorities that Interior has specifically reserved pursuant to Section 5.12, including potential conditions referenced in Section 5.10(e), Interior hereby covenants not to seek, and waives any and all rights it may have to seek or in any way to obtain, on behalf of the Tribes in connection with Project No. 2030, any Additional Compensation from PGE, PGE's customers or PGE's Personnel and Invitees, for PGE's activities contemplated by this Agreement and the Included Agreements. Interior also hereby covenants not to recommend or seek, pursuant to Section 10(e), Compensation that is different than or inconsistent with that contained in this Agreement.

(c) Quiet Enjoyment. Consistent with the provisions of Section 4.10, Interior covenants to provide PGE the full, unrestricted and quiet enjoyment of the Project Use Rights.

ARTICLE XI
CONDITIONS TO CLOSING

The obligations of the Tribes and PGE hereunder to consummate the transactions to be consummated at Closing are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by the Party having the benefit of such condition in its sole discretion):

11.1 Representations and Warranties.

The representations and warranties made by each of the Parties to the other Parties in this Agreement and the Included Agreements, taken as a whole, shall be true and correct, in all material respects, on and as of the Closing as though repeated on and as of the Closing or, in the case of representations and warranties made as of a specified date earlier than the Closing, on and as of such earlier date.

11.2 Performance.

Each of the Parties shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by such Party at or before the Closing.

11.3 Orders and Laws.

There shall not be in effect on the Closing Date any order or law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Included Agreements.

11.4 Regulatory Consents and Approvals.

(a) The FERC Approval and the OPUC Approval shall have been duly obtained, made or given and shall be in full force and effect and shall be Final Orders.

(b) The FERC Approval shall be satisfactory to PGE, the Tribes and Interior in each such Party's sole discretion, including approving the transactions contemplated hereby and the terms and conditions of this Agreement and each of the Included Agreements, and, with respect to PGE, the regulatory treatment of any and all financial impacts thereof.

(c) The OPUC Approval shall be satisfactory in all respects to PGE in its sole discretion, including approving the transactions contemplated hereby and the terms and conditions of this Agreement and each of the Included Agreements and the regulatory treatment of any and all financial impacts thereof.

(d) The OPUC Approval shall be satisfactory to Tribes in their sole discretion, but only to the extent that the OPUC Approval contains provisions which would have a material adverse effect on the interests of the Tribes under this Agreement and the Included Agreements taken as a whole.

(e) The OPUC Approval shall be satisfactory to Interior in its sole discretion, but only to the extent that the OPUC Approval contains provisions which would have a material adverse effect on the interests of the Tribes under this Agreement and the Included Agreements taken as a whole.

(f) Unless the sale of PGE to Sierra Pacific Resources shall have been terminated as of the Closing Date, either (i) the SEC Approval shall have been duly

obtained, made or given and shall be in full force and effect and shall be a Final Order or (ii) the SEC shall have issued a Final Order determining SEC Approval is not required for the sales of assets provided for by this Agreement.

(g) The SEC Approval shall be satisfactory in all respects to PGE in its sole discretion, including approving the transactions contemplated hereby and the terms and conditions of this Agreement and each of the Included Agreements and the regulatory treatment of any and all financial impacts thereof.

(h) All terminations or expirations of waiting periods imposed by any Governmental Authority necessary for the consummation of the transactions contemplated by this Agreement and the Included Agreements shall have occurred.

11.5 Conditions to Included Agreements.

Each of the respective conditions to the obligations of the Tribes and PGE to the Included Agreements, as set forth in such Included Agreements, shall have been satisfied or waived by the Party entitled to waive same.

11.6 Proceedings.

All corporate and other proceedings to be taken by each of the Tribes and PGE in connection with the transactions contemplated hereby, including the vote of the members of the Tribes referenced in the recitals hereto, and all documents incident thereto shall be reasonably satisfactory in form and substance to the other Party and its counsel, and such Party and its counsel shall have received all such certified or other copies of such documents as it or they may reasonably request.

11.7 Deliveries.

PGE and the Tribes shall have executed and delivered (a) the Asset Purchase Agreement, (b) the Ownership and Operation Agreement, (c) the Escrow Agreement, (d) the Mutual General Release, and (e) the opinions of counsel, dated as of the Closing Date, in the forms provided as Exhibits F and L, hereto, together with any and all other documents, instruments and payments required to be delivered pursuant thereto or pursuant to other provisions of this Agreement and the Included Agreements. Both the Opinion of Counsel attached hereto as Exhibit H and the approval statement attached hereto as Exhibit K delivered by Interior to the Tribes and PGE in connection with the execution of this Agreement shall not have been withdrawn or disavowed by Interior.

11.8 Closing.

Following the satisfaction or waiver of the conditions set forth in this Article XI, there shall be a closing of the transactions contemplated by this Agreement ("Closing"). The Closing shall take place at the principal offices of PGE, or at such other place as PGE and the Tribes mutually agree, at 10:00 A.M. local time on the Closing Date. At the Closing, PGE and the Tribes shall execute and deliver (a) to each other, the Escrow Agreement and (b) to the Escrow Agent, pursuant to the terms and conditions of the

Escrow Agreement fully executed copies of (i) the Asset Purchase Agreement, (ii) the Ownership and Operation Agreement, (iii) the Mutual Settlement and Release, (iv) the Escrow Agreement (v) the opinions of counsel required by the Asset Purchase Agreement and (vi) such other and further documents, instruments, certificates and conveyances as may be necessary and appropriate to carry out and give effect to the transactions contemplated by this Agreement and the Included Agreements.

ARTICLE XII
TERM AND TERMINATION

This Agreement shall be effective upon the Effective Date. The Term of this Agreement shall be from the Effective Date through the New License Expiration Date; provided, however, that any obligations of any of the Parties outstanding as of the New License Expiration Date shall survive and continue. This Agreement shall be subject to termination prior to the expiration of such Term only as provided in this Article XII. Except as expressly provided in this Article XII, each of the Parties, to the extent not prohibited by law, waives all rights now or hereafter existing, conferred by statute, common law or otherwise to quit, terminate or surrender this Agreement.

12.1 Mutual Agreement.

This Agreement may be terminated at any time by mutual written consent of PGE, Interior and the Tribes.

12.2 Lapse of Time Prior to Closing.

This Agreement may be terminated by PGE, the Tribes or Interior if the Closing shall not have occurred on or before the day that is one hundred eighty (180) days after the Effective Date, provided that the right to terminate this Agreement under this Section 12.2 shall not be available to any Party whose failure to fulfill any obligation under this Agreement or any Included Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; provided, however, further that if on such date any of the conditions to the Closing set forth in Section 11.4 shall not have been fulfilled, but all other conditions to the Closing shall be fulfilled or shall be capable of being fulfilled, then this Agreement may not be terminated until the first anniversary of the Effective Date.

12.3 Failure to Obtain Approvals/Injunction.

This Agreement may be immediately terminated by either PGE, the Tribes or Interior prior to the Closing if (a) any Governmental Authority whose consent is a condition to the obligations of PGE or the Tribes shall have determined not to grant its consent, (b) the FERC Approval, the OPUC Approval and the SEC Approval shall have been obtained but shall contain terms or conditions which are unsatisfactory to PGE, the Tribes and/or Interior as provided in Section 11.4, (c) one or more courts of competent

jurisdiction of the United States or of any state thereof shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the Closing or (d) any statute, rule or regulation shall have been enacted by any state or federal government authority in the United States that prohibits consummation of the Closing.

12.4 Material Violation or Breach.

(a) Prior to the Closing, this Agreement may be terminated by the Tribes if there has been a material violation or breach by PGE of any agreement, representation or warranty contained in this Agreement that has rendered the satisfaction of any condition to the obligations of the Tribes to effect the Closing impossible and such violation or breach has not been waived by the Tribes. Prior to the Closing, this Agreement may also be terminated by the Tribes if (i) there has been a material violation or breach by PGE of any agreement, representation or warranty contained in this Agreement, (ii) such material violation or breach has not been waived by the Tribes, (iii) such material violation or breach is capable of being cured by PGE and (iv) PGE has failed (A) to cure such material violation or breach within thirty (30) days of receipt of written notice thereof by the Tribes or (B) in the event a material breach cannot be cured despite diligent efforts within a thirty (30) day period, PGE has failed to initiate promptly and maintain continuously diligent efforts to cure such breach.

(b) Prior to the Closing, this Agreement may be terminated by PGE if there has been a material violation or breach by the Tribes of any agreement, representation or warranty contained in this Agreement that has rendered the satisfaction of any condition to the obligations of PGE to effect the Closing impossible and such violation or breach has not been waived by PGE. Prior to the Closing, this Agreement may also be terminated by PGE if (i) there has been a material violation or breach by the Tribes of any agreement, representation or warranty contained in this Agreement, (ii) such violation or breach has not been waived by PGE, (iii) such material breach is capable of being cured by the Tribes and (iv) the Tribes have failed (A) to cure such material breach within thirty (30) days of receipt of written notice thereof by PGE or (B) in the event a material breach cannot be cured despite diligent efforts within a thirty (30) day period, the Tribes have failed to initiate promptly and maintain continuously diligent efforts to cure such breach.

(c) After the Closing and prior to the Transfer Date, this Agreement may be terminated by the Tribes only (i) if (A) there has been a material violation or breach by PGE of any agreement, representation or warranty contained in this Agreement of such significance as to deprive the Tribes of the material economic benefits and overall value of the consideration provided to the Tribes by PGE pursuant to all of the terms and conditions of this Agreement, (B) such material violation or breach has not been waived by the Tribes, and (C) PGE has failed to cure such material violation or breach within seventy-five (75) days of written notice thereof by the Tribes or (ii) pursuant to Section 12.5(b). For all other material violations or breaches of this Agreement by PGE after the Closing the Tribes shall be entitled, subject to the limitations on damages and remedies otherwise provided for herein, to seek such remedies other than termination, including

damages and fees of attorneys, against PGE with respect to any such breach as are provided in this Agreement or as are otherwise available at law or in equity.

(d) After the Closing and prior to the Transfer Date, this Agreement may be terminated by PGE only (i) if (A) there has been a material violation or breach by the Tribes of any agreement, representation or warranty contained in this Agreement of such significance as to deprive PGE of the material economic benefits and overall value of the consideration provided to PGE by the Tribes pursuant to all of the terms and conditions of this Agreement, (B) such material violation or breach has not been waived by PGE, and (C) the Tribes have failed to cure such material violation or breach within seventy-five (75) days of written notice thereof by PGE or (ii) pursuant to Section 12.5(a) or (iii) if the Tribes have not satisfied Escrow Condition 2 described in Schedule B of the Escrow Agreement by the Outside Date and such failure is continuing. For all other material violations or breaches of this Agreement by the Tribes after the Closing PGE shall be entitled, subject to the limitations on damages and remedies otherwise provided for herein, to seek such remedies other than termination, including damages and fees of attorneys, against the Tribes with respect to any such breach as are provided in this Agreement or as are otherwise available at law or in equity.

12.5 Subsequent Regulatory Events.

(a) If at any time prior to the Transfer Date, FERC or any court enters a Final Order with respect to Project No. 2030 or the Pelton and Round Butte Facilities which conflicts with, alters, amends, reconsiders, modifies, or in any way affects the terms and conditions of the FERC Approval so as, in PGE's reasonable business judgment, to have material adverse effect on the economic benefits to PGE of the transactions contemplated by this Agreement and the Included Agreements taken as a whole, or to impose upon PGE an obligation to pay Additional Compensation to the Tribes, PGE shall have the right, to be exercised only within sixty (60) days of the date of the subject Final Order, to terminate this Agreement and the Included Agreements upon written notice to the Tribes and Interior.

(b) If at any time prior to the Transfer Date, FERC or any court enters a Final Order with respect to Project No. 2030 or the Pelton and Round Butte Facilities which conflicts with, alters, amends, reconsiders, modifies, or in any way affects the terms and conditions of the FERC Approval so as, in the Tribes' reasonable business judgment, to have a material adverse effect on the economic benefits to the Tribes of the transactions contemplated by this Agreement and the Included Agreements taken as a whole, or to reduce the Compensation to the Tribes below that provided in Article IV, the Tribes shall have the right, to be exercised only within sixty (60) days of the date of the subject Final Order, to terminate this Agreement and the Included Agreements upon written notice to PGE and Interior.

12.6 Effect of Any Failure of FERC to Issue the New FERC License to PGE and the Tribes.

Prior to or after the Transfer Date:

(a) In the event FERC determines not to issue the Tribes and PGE the New FERC License, then either or both of the Tribes and PGE may challenge legally such determination. Pending the timely filing of any such challenge and during the pendency of any filed challenge, including all appeals thereof, this Agreement shall remain in full force and effect and neither the Tribes nor PGE shall have the right to terminate this Agreement on account of such FERC determination. In the event of any FERC determination not to issue to the Tribes and PGE the New FERC License which determination becomes a Final Order, this Agreement and the Included Agreements shall thereupon terminate without further action by any Party.

(b) In the event this Agreement is terminated pursuant to this Section 12.6, the Tribes and PGE shall comply with any orders of FERC with respect to its associated determination and the costs thereof shall be Costs of Operation as defined in the Ownership and Operation Agreement. Notwithstanding the foregoing sentence, if this Agreement is terminated pursuant to this Section 12.6, then PGE shall bear a portion of what would otherwise be costs borne by the Tribes related to the decommissioning of the Pelton and Round Butte Facilities. Such portion of the decommissioning costs that would have been borne by the Tribes as Costs of Operation shall be a function of the date when the FERC determination not to issue to the Tribes and PGE the New FERC License becomes no longer subject to appeal in accordance with the following table. Beginning in the year 2002 PGE shall bear ninety-eight percent (98%) of what otherwise would have been the Tribes Ownership Share of decommissioning costs; each year thereafter the percentage borne by PGE shall be reduced by two percent (2%). The following table illustrates this arrangement, assuming that by the date indicated FERC has not issued the New FERC License.

Date FERC Determination Final	Portion of the Tribes' Ownership Share of Decommissioning Costs Borne by PGE
2002	98%
2003	96%
2004	94%
2005	92%
2006	90%
2007	88%

Once FERC issues the New FERC License, PGE shall have no responsibility to bear any of the Tribes' Ownership Share of decommissioning costs.

12.7 Rejection of Proposed New FERC License by the Tribes or PGE or Both.

Prior to or after the Transfer Date:

(a) In the event FERC issues a proposed New FERC License that materially conflicts with the terms or conditions of this Agreement or is otherwise unacceptable in the judgment of the Tribes or PGE or both, then either the Tribes or PGE,

or both, may challenge legally the conflicting terms and conditions and/or acceptable provisions proposed by FERC. Pending the timely filing of any such challenge and during the pendency of any filed challenge, including all appeals thereof, this Agreement shall remain in full force and effect and no Party shall have the right to terminate this Agreement on account of such FERC determination. In the event any such FERC proposed terms and conditions and/or unacceptable provisions to the New FERC License become no longer subject to appeal, then either the Tribes or PGE, or both, may reject the proposed New FERC license. Any such rejection (or failure to accept the new license within the period required by FERC) shall automatically constitute a notice of termination by the rejecting Party to the other Parties to this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section 12.7, the Parties shall comply with any orders of FERC with respect to its associated determination and the costs thereof shall be Costs of Operation as defined in the Ownership and Operation Agreement.

12.8 Rejection by PGE Resulting from Conditions.

As provided in Section 5.13, PGE may reject the New FERC License and terminate this Agreement in the event Interior seeks to impose any condition(s) on the New FERC License, or FERC accepts an Interior recommendation to impose condition(s), which would require any modification of the ownership of the Pelton and Round Butte Facilities at any time or which would require PGE to pay the Tribes any Additional Compensation.

12.9 Failure of Tribes to Secure Funding in Order to Pay Purchase Price.

In the event the Tribes have fulfilled their covenant contained in Section 10.3(h), but nevertheless do not secure the funding to pay to PGE the Purchase Price (as defined in the Asset Purchase Agreement), this Agreement and the Included Agreements shall terminate upon the Outside Date (as defined in the Escrow Agreement) without further action by any Party.

12.10 Effect of Termination.

If this Agreement is validly terminated pursuant to this Article XII, this Agreement shall forthwith become null and void, and there shall be no liability or obligation on the part of any Party (or any of their respective officers, directors, employees, agents or other representatives or Affiliates), except as provided in the next succeeding sentence and except as may be expressly provided to the contrary herein. Notwithstanding any other provision in this Agreement to the contrary, upon termination by the Tribes of this Agreement, PGE shall remain liable to the Tribes for any willful breach by PGE of the representations, warranties or covenants of PGE set forth in this Agreement existing at the time of such termination, and the Tribes shall remain liable to PGE for any willful breach by the Tribes of the representations, warranties or covenants of the Tribes set forth in this Agreement existing at the time of such termination, and either Party, subject to the limitations on damages and remedies otherwise provided for

herein, may seek such remedies, including damage and fees of attorneys, against the other with respect to any such breach as are provided in this Agreement as are otherwise available at law or in equity. Upon any termination prior to the Transfer Date, and only upon any such termination prior to the Transfer Date, each of the Parties shall be restored to the position they occupied with respect to the subject matter of this Agreement and the Included Agreements as if this Agreement and the Included Agreements had not been executed and delivered, including with respect to their competing applications for the New FERC License and any and all pre-existing Claims, rights, obligations and duties of the Parties.

12.11 Effect of FERC Issuance of a New FERC License for a Stated Term Less than Forty (40) Years.

(a) The Tribes and PGE have individually and mutually determined that it is in their interests to obtain a New FERC License with a Stated Term of fifty (50) years. They have also determined that such a Stated Term would best allow them to incur over an appropriate period costs to mitigate potential impacts of Project No. 2030 on natural resources. Finally, the Tribes and PGE have negotiated the economic benefits and costs of this Agreement on the basis that the sum of (a) the period from January 1, 2002 to the date FERC issues the New FERC License, (b) the Stated Term and (c) the period from the end of such Stated Term to the date FERC issues a third long-term license for Project No. 2030, will be at least fifty (50) years and that the Compensation being paid by PGE under this Agreement relates to the rights granted PGE hereunder for a period at least that long. The Tribes and PGE acknowledge that were the New FERC License to be for a Stated Term less than forty (40) years and were the rights granted PGE hereunder to expire after the New License Expiration Date, then PGE would have compensated the Tribes to a greater extent than intended. The Tribes and PGE therefore agree that in the event FERC issues the New FERC License for a Stated Term less than forty (40) years and either the Tribes or PGE or both are licensees for the subsequent FERC license, then the Tribes and PGE shall make an equitable adjustment in the economics of this Agreement to account for the lesser period of the New FERC License.

(b) If the conditions specified in Section 12.11(a) are met, then the nature and extent, if any, of the equitable adjustment referenced therein shall be as provided in this Section 12.11(b).

(i) In the event PGE and the Tribes continue as co-licensees of Project No. 2030 beyond the New License Expiration Date with the same percentage ownership shares as they had as of the New License Expiration Date, the Tribes hereby waive their entitlement to collect Section 10(e) payments from PGE commencing on the New License Expiration Date and continuing for a period equal to 40 years minus the Stated Term.

(ii) In the event PGE's Ownership Share in Project No. 2030 subsequent to the New License Expiration Date is less than 49.99%, the Tribes shall pay to PGE the net benefits (the fair market value of the Project's output less the costs to produce such output) of the project not

received by PGE for the number of years by which the Stated Term is less than forty (40) years. (Thus, for example, if the Stated Term were thirty-five (35) years and PGE did not continue as a licensee, then PGE would be entitled to be paid 49.99% of the net benefits of the Project for the five year period commencing on the New License Expiration Date. If the Stated Term were thirty-five (35) years and PGE did continued as a licensee having a 25% ownership percentage, then PGE would be entitled to be paid 24.99% of the net benefits of the Project for the five year period commencing on the New License Expiration Date). The calculation of net benefits is based on the actual hourly market value of the energy, the prescheduled amount of energy based upon capability of the Pelton and Round Butte Facilities, and the capital, operations, and maintenance costs PGE would have incurred if it still owned 49.99% of the Pelton and Round Butte Facilities. Such net benefits shall be calculated in accordance with the following formula:

Annual Tribes Payment to PGE =(OP*Annual Energy Value)
- (OP/49.99%)*((GP + Additions - AD-DT) * CC)
- O&M * OP
- Depreciation*OP
- Property Taxes*OP)

Where,

OP = The difference obtained by subtracting PGE's Ownership Share percentage after the New License Expiration Date from 49.99%

GP = PGE's gross plant in service value associated at the end of the New FERC License

AD = PGE's accumulated depreciation at the end of the New FERC License plus "Depreciation" (as defined below) subsequent to the end of the New FERC License

DT = PGE's deferred taxes at the end of the New FERC License plus deferred taxes that would have been accrued subsequent to the end of the New FERC License

Additions = .4999 times total Project cumulative Capital Additions following the end of the New FERC License

Depreciation = .4999 times total annual Project Depreciation on plant & Capital Additions following the end of the New FERC License

O&M = Total annual Project direct operation & maintenance expenses but not to exceed the average real annual Project direct O&M for the last ten years of the New FERC License (determined by adjusting actuals to account for changes in the CPI) unless such excess is attributable to conditions imposed by the FERC license which follows the New FERC License (Budget trued up to actuals at year end)

CC = PGE's weighted average cost of capital, grossed up for income taxes, of 12%

Scheduled Hourly Project Energy = Available Project Energy pre-scheduled on hourly basis

Hourly Market Price = Mid-Columbia hourly market price or appropriate substitute

Annual Energy Value = Annual sum (Scheduled Hourly Project Energy * Hourly Market Price)

For purposes of the monthly calculation the energy value would be for the specific month, O&M would be the budget spread equally over the year and trued up to actuals in the December billing, while the capital costs are assumed to be spread equally over the year with no true up during the year. Payments would be made on a monthly basis within 15 days of the end of the month. Payments by the Tribes to PGE pursuant to this Section 12.11(b)(ii) would be net of all Section 10(e) obligations PGE would have to the Tribes for the applicable period related to PGE's actual ownership percentage of the Pelton and Round Butte Facilities.

(iii) In the event PGE's Ownership Share in Project No. 2030 subsequent to the New License Expiration Date exceeds 49.99%, PGE shall pay to the Tribes the net benefits (the fair market value of the Project's output less the costs to produce such output) of the project not received by the Tribes for the number of years by which the Stated Term is less than forty (40) years. (Thus, for example, if the Stated Term were thirty-five (35) years and the Tribes did not continue as a licensee, then, assuming the Tribes had exercised all their purchase options, the Tribes would be entitled to be paid 50.01% of the net benefits of the Project for the five year period commencing on the New License Expiration Date. If the Stated Term were thirty-five (35) years and the Tribes continued as a licensee having a 25% ownership percentage, then the Tribes would be entitled to be paid 25.01% of the net benefits of the Project for the five year period commencing on the New License Expiration Date). The calculation of net benefits is based on the actual hourly market value of the energy, the prescheduled amount of energy based upon capability of the Pelton and Round Butte Facilities, and the capital, operations, and maintenance costs the Tribes would have incurred if they still owned 50.01% of the Pelton and Round Butte Facilities. Such net benefits shall be calculated in accordance with the following formula:

Annual PGE Payment to the Tribes =(OP*Annual Energy Value)
- DS
- O&M * OP
- R&R
- PT
- A

Where,

OP = The difference obtained by subtracting the Tribes' Ownership Share percentage after the New License Expiration Date from 50.01%

DS = The Tribes' hypothetical debt service related to OP, including return of and return on any Tribal equity at the same rate and using the same term as debt financing

R&R = Renewals and replacements, plus any other capital requirements, related to OP that the Tribes would have normally funded from revenue, less interest on reserves associated with financing

PT = Payments in lieu of taxes the Tribes would have made relative to OP

A= The Tribes Project administration costs related to OP

O&M = Total annual Project direct operation & maintenance expenses but not to exceed the average real annual Project direct O&M for the last ten years of the New FERC License (determined by adjusting actuals to account for changes in the CPI) unless such excess is attributable to conditions imposed by the FERC license which follows the New FERC License (Budget trued up to actuals at year end)

Scheduled Hourly Project Energy = Available Project Energy pre-scheduled on hourly basis

Hourly Market Price = Mid-Columbia hourly market price or appropriate substitute

Annual Energy Value = Annual sum (Scheduled Hourly Project Energy * Hourly Market Price)

For purposes of the monthly calculation the energy value would be for the specific month, O&M would be the budget spread equally over the year and trued up to actuals in the December billing, while the capital costs are assumed to be spread equally over the year with no true up during the year. Payments would be made on a monthly basis within 15 days of the end of the month. Payments by PGE to the Tribes pursuant to this Section 12.11(b)(iii) would be in lieu of all Section 10(e) obligations PGE would have to the Tribes for the applicable period.

(iv) In the event neither PGE nor the Tribes continue as a licensee of the Project , then neither PGE nor the Tribes shall be entitled to an equitable adjustment to account for the shorter term of the New FERC License.

(c) Other than as specified in this Section 12.11, neither the Tribes nor PGE shall be entitled to an adjustment to account for the period from January 1, 2002 through the New License Expiration Date being a period shorter than or longer than fifty (50) years.

12.12 Rights at End of New FERC License.

The Tribes and PGE agree that each of them shall be permitted, if they wish, to compete for the FERC license for Project No. 2030 that follows the New FERC License and that nothing in this Agreement shall preclude them from doing so. In the event the ownership shares of the Tribes and PGE in the Pelton and Round Butte Facilities are different during such new license period from what they are at the end of the New FERC License, then the Party achieving an increase shall purchase its increased share from the other Party at the price lawfully determined by FERC for such ownership share.

ARTICLE XIII
WAIVER OF IMMUNITY; DISPUTES

13.1 Waiver of Immunity.

The Tribes acknowledge and agree that in entering into this Agreement and the Included Agreements, they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement and the Included Agreements with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. SUBJECT TO THE PROVISIONS OF SECTION 13.5, THE TRIBES THEREFORE HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT AND THE INCLUDED AGREEMENTS. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (A) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (B) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND THE INCLUDED AGREEMENTS AND (C) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT AND THE INCLUDED AGREEMENTS.

13.2 Choice of Laws.

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

13.3 Dispute Resolution between the Tribes and PGE

(a) Mandatory Mediation. As a condition precedent to commencing any proceedings, suit, action or arbitration by one of the Tribes or PGE against the other relating to this Agreement, the subject matter hereof, any activities undertaken pursuant to this Agreement or with respect to the operation, maintenance or management of the

Pelton and Round Butte Facilities (collectively referred to as "Proceedings"), the complaining Party shall first submit the claim or controversy to mandatory mediation for a period of ninety (90) days following appointment of a mediator; provided, that the Tribes and PGE need not pursue mediation with respect to any dispute arising under Section 4.5 relating to timber valuations or to obtain immediate injunctive relief to prevent irreparable harm. The Tribes and PGE agree to cooperate and operate in good faith to appoint the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator. If the Tribes and PGE are unable to agree unanimously upon the appointment of the mediator, then they shall unanimously seek appointment of a mediator by the Chief Judge of the United States District Court for the District of Oregon. If the Chief Judge refuses, or fails, to act within twenty (20) days the mediator shall be selected by the senior United States Senator for the State of Oregon. PGE and the Tribes agree to share equally the mediator's fees and expenses. In the event the senior United States Senator for the State of Oregon also refuses or fails to act within such period, then either the Tribes or PGE may bypass mediation and proceed in accordance with paragraphs (b) and (c) below.

(b) Jurisdiction and Venue. The Tribes and PGE agree that any disputes concerning, relating to or arising out of this Agreement and the Included Agreements present a federal question. With respect to any Proceeding each of the Tribes and PGE irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each of the Tribes and PGE irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 13.3(c) below, each of the Tribes and PGE irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. The Tribes specifically waive any right they may have to have any Proceeding involving PGE and PGE's Personnel and Invitees and their activities related to Project No. 2030 determined in any tribal court. PGE's entry into this Agreement and the Included Agreements shall not be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's activities.

(c) Determination by FERC or Arbitration if No U.S. District Court or Oregon State Court Jurisdiction. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Tribes and PGE shall first

seek to have such Proceeding determined by FERC. The Tribes and PGE further agree that in the event any Proceeding is so brought to FERC and FERC declines to determine the Proceeding, then the Tribes and PGE shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association in effect on the date such arbitration is commenced, including the optional rules for provisional remedies of such association; provided, however, that any provision of this Article XIII shall control over any conflicting rules of the American Arbitration Association. The Tribes and PGE agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award damages prohibited by this Agreement. The Tribes and PGE further agree that they will faithfully observe this Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

13.4 Disputes in which Interior is a Participant.

(a) Voluntary mediation. Prior to commencing any Proceedings relating to Interior's actions or inactions under this Agreement, the Parties shall, to the extent practicable, provide notice of the dispute and an opportunity to meet to resolve the dispute.

(b) Jurisdiction. The Tribes and PGE agree that any disputes concerning, relating to or arising out of this Agreement and the Included Agreements that involve Interior present a federal question. With respect to any Proceeding involving Interior each of the Tribes and PGE irrevocably submits to the exclusive jurisdiction of the courts of the United States. The Tribes and PGE each irrevocably waives any objection which it may have at any time that such court should not exercise its jurisdiction or should defer to

some other judicial or administrative tribunal. Each of the Tribes and PGE irrevocably waives any right it might otherwise have to seek to have any Proceeding in which Interior is a participant determined in any tribal court and agrees that assumption of jurisdiction by any federal court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies.

(c) No waiver of sovereign immunity of Interior. Interior does not waive any claim or assertion of sovereign immunity from suit.

13.5 Limitations on Recourse.

As of the Transfer Date, the Tribes and PGE hereby pledge all their Project Rights (as defined in the Ownership and Operation Agreement) of the Pelton and Round Butte Facilities to satisfy any and all obligations they may have to each other under this Agreement and otherwise with respect to the Pelton and Round Butte Facilities. As of the Transfer Date, PGE agrees to seek satisfaction of any money damage claims it may have against the Tribes under this Agreement and the Included Agreements with respect to the Pelton and Round Butte Facilities only from the Tribes' Allocation (as defined in the Ownership and Operation Agreement). Likewise, as of the Transfer Date the Tribes agree to seek satisfaction of any money damage claims they may have against PGE under this Agreement and the Included Agreements with respect to the Pelton and Round Butte Facilities only from PGE's Allocation (as defined in the Ownership and Operation Agreement). The provisions of this Section 13.5 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

13.6 Disclaimer of Tribal Court Jurisdiction Over Actions by Third Parties Against PGE.

Tribal courts shall have no jurisdiction in any actions by any Person not a Party to this Agreement against PGE during the Term of this Agreement.

ARTICLE XIV
MISCELLANEOUS

14.1 Further Assurances; Post-Closing Cooperation.

Subject to the terms and conditions of this Agreement, PGE and the Tribes shall each use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable under Applicable Law to consummate and make effective the transactions contemplated by this Agreement and the Included Agreements, including efforts to obtain all required consents and approvals. Neither of the Parties shall, without the prior written consent of the other Party, take or fail to take any action that would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or any of the Included Agreements. From time to time after the date hereof, whether prior to or after the Closing, and without further consideration, the Parties shall, each at its own expense,

execute and deliver such documents, and provide such information, to the other Party as such Party may reasonably request in order to accomplish and consummate the transactions contemplated by, and perform their respective obligations under, this Agreement and the Included Agreements. At the request of PGE, the Tribes shall execute a short-form version of this Agreement for recordation.

14.2 Assignments and Transfers

Neither this Agreement nor any right, interest or obligation hereunder may be assigned, sold, transferred or conveyed by either the Tribes or PGE without the prior written consent of the other, which Party may withhold its consent in its sole discretion, and any attempted assignment not in compliance therewith shall be void, except the following assignments and transfers which shall not require such consent:

(a) assignments and transfers which occur by operation of law;

(b) assignments and transfers by the Tribes of any of their rights under the Ownership and Operation Agreement specifically permitted by Section 12.1(c) of the Ownership and Operation Agreement; or

(c) assignments and transfers by PGE of its rights, interests and obligations hereunder, in whole or in part, in conjunction with an assignment or transfer permitted pursuant to Section 12.1(d)-(h) of the Ownership and Operation Agreement.

Assignments and transfers shall not relieve either the Tribes or PGE of any obligation hereunder, except to the extent agreed in writing by the other Party, provided that an otherwise valid assignment or transfer by PGE to a Person (a) having, as of the date of such assignment or transfer, a tangible net worth not less than that of PGE as of such date (or whose obligations hereunder are guaranteed by a Person having such tangible net worth), and (b) having an Investment Grade or higher rating on its senior, unsecured debt as of such date, shall automatically result in a full and complete release of PGE from all of its unmatured obligations hereunder and a novation of this Agreement between the Tribes and such assignee or transferee.

Assignment or transfers by PGE of a portion or all of its ownership shares of the Project are subject to PGE's obligations, and the Tribes' rights, pursuant to Section 5.6 of this Agreement.

14.3 Notices.

(a) Means of Notification. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

To the Tribes:
Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

with a copy to:

Confederated Tribes of the Warm Springs Reservation
Secretary-Treasurer
P. O. Box C
Warm Springs, OR 97761

and a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To Interior:
Secretary
U.S. Department of the Interior
1849 C Street, NW Mail Stop 7229
Washington, DC 20240-0001

with a copy to:

Solicitor
U.S. Department of the Interior
1849 C Street, NW Mail Stop 6352
Washington, DC 20240-0001

and with a copy to:

Northwest Regional Director
Northwest Region
Bureau of Indian Affairs
911 NE 11th Ave.
Portland, OR 97232

To PGE:
Portland General Electric Company
Attention: Senior Vice President, Power Supply
1-World Trade Center-17

121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1-World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

(b) Effective Time. Notice given pursuant to this Section 14.3 shall be effective upon physical receipt by both of the two remaining Parties.

14.4 No Consequential, Incidental or Punitive Damages.

Consistent with the Recitals to this Agreement, the Tribes and PGE desire to minimize to the extent possible the potential for future disagreements between them with respect to Project No. 2030 from matters arising under this Agreement. The Tribes and PGE also recognize the potential magnitude of the potential consequential, incidental or punitive damages that might arise from this Agreement and desire to eliminate the risks each might face were such categories of damages not excluded. For these reasons, the Tribes and PGE agree that the remedies available to them shall be limited as provided below.

(a) THE TRIBES AND PGE AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER THE TRIBES OR PGE BE LIABLE TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED.

(b) THE TRIBES AND PGE AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW, IN NO EVENT SHALL EITHER THE TRIBES OR PGE BE LIABLE TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

(c) To the extent the foregoing limitations of liability and exclusions of damages are for any reason determined to be ineffective by a court of competent jurisdiction, the Parties stipulate that the calculation of damages for those Claims which survive the limitations and exclusions specifically set forth in paragraphs (a) and (b) shall be no greater than $500,000 per Claim.

14.5 Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

14.6 Attorney Fees and Litigation Expenses.

This Section 14.6 shall apply to the Tribes and PGE, but shall not apply to Interior either in terms of being obligated to pay or entitled to recover. In the event any Proceeding is commenced to recover damages or enforce any rights or obligations under this Agreement, then the prevailing Party (i.e. either the Tribes or PGE) in such action shall be entitled to recover from the non-prevailing Party (i.e. either the Tribes or PGE) its attorney fees, including the reasonable fees of in-house counsel, expert fees, and all reasonable out-of-pocket expenses incurred in enforcing the prevailing Party's rights under this Agreement, regardless of whether those fees, costs or expenses are otherwise recoverable as costs in the Proceeding, including all fees and expenses incurred in investigation and preparation of the Proceeding before it is filed and upon appeal.

14.7 Waivers.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

14.8 No Third-Party Beneficiaries.

None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any Person or entity not a Party to this Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

14.9 No Reliance.

Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation or promise of the other Party or any other Person or entity, except as expressly stated in this Agreement.

14.10 Assumption of Risk.

In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, neither of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof.

14.11 Waiver of Defenses.

Upon the Effective Date of this Agreement, PGE and the Tribes release each other from any and all Claims relating to the formation and negotiation of this Agreement, including reformation, rescission, mistake of fact, or mistake of law. PGE and the Tribes further agree that they waive and will not raise in any court, administrative body or other tribunal any Claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.

14.12 Waiver of Certain Claims by Tribes against Interior.

Interior has reviewed this Agreement and has found it in the Tribes' interest based on Interior's evaluation of the likely range of future market prices for power and potential costs of obtaining and implementing a New FERC License. Nonetheless, in entering this Agreement, the Tribes acknowledge that they are assuming the risk of a fluctuating market price for power, and the risk of costs of obtaining and implementing a New FERC License. Therefore, the Tribes waive and release any Claims against Interior for losses of any kind arising out of the market price for power or arising out of the costs of obtaining and implementing a New FERC License.

14.13 Independent Counsel.

The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.

14.14 Opinions of Counsel.

Prior to the execution of this Agreement, the Parties have delivered to each other the opinions of counsel attached hereto as Exhibits F, G and H. The Parties agree that receipt of such opinions was a material consideration for each of them in entering into this Agreement.

14.15 Headings.

The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

14.16 Entire Agreement.

This Agreement constitutes the complete and entire expression of agreement between the Parties and supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, and communications, whether written or oral, which may have been made in connection with the subject matter of this Agreement. Any such representations or claims are hereby disclaimed. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, having read and intending to be bound by the provisions of this Long-Term Global Settlement and Compensation Agreement, the Parties have executed this Agreement as of the date first above written.

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: _____
Name:
Title: Chairman

THE UNITED STATES DEPARTMENT OF THE INTERIOR, acting by and through the Secretary of the United States Department of the Interior

By: _____
Name:
Title: DEPUTY SECRETARY

PORTLAND GENERAL ELECTRIC COMPANY

By: _____
Name: Peggy Fowler
Title: Chief Executive Officer and President

EXHIBIT 4

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Portland General Electric Company and Confederated Tribes of the Warm Springs Reservation of Oregon — Project No. 2030-036

ORDER APPROVING SETTLEMENT AND ISSUING NEW LICENSE

(Issued June 21, 2005)

1. On December 16 and 17, 1999, Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes), respectively, filed competing applications to continue operation and maintenance of the 366.82-megawatt (MW) Pelton Round Butte Hydroelectric Project No. 2030 (Pelton Round Butte Project), located on the Deschutes River[1] in Jefferson County, Oregon. The project occupies 3,503.74 acres of federal and tribal lands administered by the U.S. Forest Service (Forest Service), U.S. Bureau of Land Management (BLM), and U.S. Bureau of Indian Affairs (BIA).[2]

2. On June 29, 2001, PGE and the Tribes jointly filed an amendment to combine their license applications and become co-applicants for a new license. Subsequently, on July 30, 2004, PGE and the Tribes filed a comprehensive Settlement Agreement signed by PGE, the Tribes, and 20 stakeholders. The Settlement Agreement includes proposed license articles embodying the provisions of the agreement. For the reasons discussed below, this order incorporates most of the Settlement Agreement's proposed license

[1] Parts of the project backwaters extend 7 miles into the Crooked River and 13 miles into the Metolius River.

[2] Federal Power Act (FPA) section 23(b)(1), 16 U.S.C. 817 (1), requires the project to be licensed because of its location on federal lands.

articles and issues a new license for the Pelton Round Butte Project. Issuing a new license is in the public interest because it would allow the project to continue generating electric energy to serve growing regional demand while protecting and enhancing environmental, recreational, and cultural resources.

BACKGROUND

3. The original license for the Pelton Round Butte Project was issued to PGE on December 21, 1951, with a term expiring on December 31, 2001.[3] In 1979, PGE and the Tribes applied to amend the license to permit the Tribes to construct and operate a 15-MW powerhouse at the project's Reregulating Dam. In 1980, the Commission approved the amendment, pursuant to which the Tribes became a joint licensee for the project to the extent of their interests.[4] On November 21, 2000, the Commission amended the license to designate PGE and the Tribes co-licensees without limitation.[5] Since expiration of the existing license, PGE and the Tribes have operated the project under annual licenses.[6]

4. On April 20, 2000, PGE, the Tribes, and the U.S. Department of the Interior (Interior) filed a request for approval of a Long-Term Global Settlement and Compensation Agreement (Global Agreement). The Global Agreement resolved long-standing issues between PGE and the Tribes regarding the project's use and occupancy of 2,161.9 acres of Tribal reservation lands. The Global Agreement stipulated, among other things, that PGE and the Tribes would merge their competing relicense applications into one and become co-applicants, thereby eliminating the competition for a new license. The Commission approved the Global Agreement on November 21, 2000, and noted that once the relicense application amendment was filed, the Commission would merge the two proceedings into one.[7] On July 11, 2001, subsequent to the filing of the joint relicense application amendment, the Commission issued a notice merging both license applications into one docket, P-2030-036.

5. On August 10, 2001, the Commission issued a notice accepting the joint relicense application amendment and setting a deadline of October 10, 2001, for filing protests and motions to intervene. Timely motions to intervene were filed by Jefferson County, Oregon; the U.S. Department of Agriculture; Interior; Trout Unlimited; American Rivers;

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[3] 10 FPC 450 (1951).

[4] 10 FERC ¶ 62,142. The Commission no longer approves segregated license interests of this kind.

[5] 93 FERC ¶ 61,183 (2000).

[6] *See* Section 15(a)(1) of the FPA, 16 U.S.C. § 808(a)(1).

[7] 93 FERC ¶ 61,183.

Native Fish Society; Oregon Trout; WaterWatch of Oregon; and the National Marine Fisheries Service (NOAA Fisheries).[8] Late motions to intervene were filed by the State of Oregon on October 23, 2001, and jointly by the Cities of Bend, Redmond, and Madras, Oregon, and the Deschutes Valley Water District (Cities and District) on April 25, 2003. The State of Oregon and the Cities and District were granted late intervention on November 21, 2001, and July 1, 2003, respectively. None of the motions to intervene were in opposition to the project. Comments in response to the notice were filed by the Forest Service, BLM, and Interior.

6. On August 29, 2003, the Commission staff issued, for public comment, a draft Environmental Impact Statement (EIS) that evaluated the potential impacts of continued operation of the Pelton Round Butte Project. Comments on the draft EIS were filed by WaterWatch of Oregon, Oregon Water Resources Department on behalf of the Oregon Department of Fish and Wildlife (Oregon DFW), PGE and the Tribes jointly, the Tribes' Natural Resources Departments, Forest Service, Interior, U.S. Environmental Protection Agency, NOAA Fisheries, and Jefferson County.

7. On December 29, 2003, PGE and the Tribes filed a Description of Proposed Preferred Alternative, describing an agreement in principle on environmental measures that the parties were intending to include in a final Settlement Agreement. PGE and the Tribes stated that they were offering the Description of Proposed Preferred Alternative prior to the execution of the final settlement to enable Commission staff to analyze an alternative in the final EIS that corresponded to the intent of many of the parties working to reach final settlement.[9]

8. On June 7, 2004, the Commission staff issued a final EIS that recommended adopting most of the measures included in the Description of Proposed Preferred Alternative, along with additional measures recommended by staff.

9. On July 30, 2004, PGE and the Tribes filed a Settlement Agreement that proposes measures consistent with the Description of Proposed Preferred Alternative and resolves various issues related to the relicensing of the Pelton Round Butte Project. The Settlement Agreement, which was signed by PGE, the Tribes, and all of the other entities

[8] The motions were timely and unopposed, and therefore, automatically granted pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214(c)(1) (2004).

[9] PGE and the Tribes filed an updated Description of Proposed Preferred Alternative on April 27, 2004.

who are parties to the relicensing proceeding, with the exception of the Deschutes Valley Water District, [10] effectively amends the relicense application and constitutes PGE's and the Tribe's proposed action. The Commission issued notice of the Settlement Agreement on August 4, 2004. Oregon DFW, Oregon DEQ, Oregon WRD, Oregon Parks, American Rivers, Oregon Trout, Trout Unlimited, and Native Fish Society all filed comments in support of the Settlement Agreement. No entity opposed the agreement.

10. The motions to intervene and comments received from interested agencies and individuals throughout the proceeding, as well as the provisions of the Settlement Agreement, have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Facilities

11. The 366.82-MW Pelton Round Butte Project consists of three developments located on the Deschutes River, Crooked River, and Metolius River. The powerhouses for all three developments are integral with each of the three project dams. The 247.12-MW Round Butte Development is the uppermost development and includes the 4,000-acre Lake Billy Chinook, the project's largest storage reservoir. Lake Billy Chinook is located on the Deschutes, Metolius, and Crooked Rivers. The dam for the 100.8-MW Pelton Development is located on the Deschutes River about 7 miles downstream from the Round Butte Dam. The 540-acre Pelton reservoir, known as Lake Simtustus, begins at the base of the Round Butte Dam. The 18.9-MW Reregulating Development is the most downstream development; its 190-acre reservoir on the Deschutes River extends from the tailwater of the Pelton Dam 2.5 miles downstream to the Reregulating Dam.

12. The principal features of the Round Butte Development are: (1) a 1,382-foot-long, 440-foot-high compacted, rock-filled embankment dam; (2) a 535,000-acre-foot reservoir (Lake Billy Chinook); (3) a powerhouse containing three 82.35-MW turbine generating units and one 70-kilowatt generating unit with a total installed capacity of 247.12 MW;

[10] The 20 signatories are U.S. Bureau of Indian Affairs (BIA); BLM; U.S. Fish and Wildlife Service (FWS); NOAA Fisheries; Forest Service; Oregon Department of Environmental Quality (Oregon DEQ); Oregon DFW; Oregon Water Resources Department (Oregon WRD); Oregon Parks and Recreation Department (Oregon Parks); Deschutes County, Oregon; Jefferson County, Oregon; City of Bend, Oregon; City of Madras, Oregon; City of Redmond, Oregon; Avion Water Company (Avion); American Rivers; The Native Fish Society; Oregon Trout; Trout Unlimited; and WaterWatch of Oregon.

(4) three 2,800-foot-long, 230-kilovolt (kV) transmission lines extending from the powerhouse to the Round Butte Switchyard; (5) a fish hatchery (Round Butte Hatchery) located adjacent to the dam; and (6) appurtenant facilities.

13. The principal features of the Pelton Development are: (1) a 636-foot-long, 204-foot-high concrete arch dam with a crest elevation of 1,585 feet mean sea level (msl); (2) 7-mile-long, 540-acre reservoir (Lake Simtustus) with a gross storage capacity of 31,000 acre-feet at a normal maximum water surface elevation of 1,580 feet msl; (3) a powerhouse with three turbine generating units with a total installed capacity of 100.8 MW; (4) a 7.9-mile-long, 230-kV transmission line extending from the powerhouse to the Round Butte Switchyard; and (7) other appurtenances.

14. The principal features of the Reregulating Development are: (1) a 1,067-foot-long, 88-foot-high rock-filled embankment dam with a spillway crest elevation of 1,402 feet msl; (2) a 2.5-mile-long, 190-acre reservoir with a gross storage capacity of 3,500-acre-feet and a useable storage capacity of 3,270 acre-feet at a normal maximum water surface elevation of 1,435 feet msl; (3) a non-operating 3-mile-long fishway extending from the tailrace upstream to the forebay of the Pelton Development; (4) a powerhouse containing one 18.9-MW, bulb-type turbine generating unit; (5) a 200-foot-long, 6.9 kV primary transmission line extending from the generator to a step-up transformer located adjacent to the powerhouse; and (7) other appurtenances.

15. A complete description of the Pelton Round Butte project facilities can be found in ordering paragraph (B).

B. Project Operation

16. The Round Butte and Pelton developments are operated as peaking facilities, typically generating between the hours of 6 a.m. and 11 p.m. daily. Lake Billy Chinook provides seasonal storage and is currently drawn down as much as 85 feet, to elevation 1,860 feet msl, in the winter, although typically the lake is only drawn down about 10 feet, to elevation 1,935 feet. The lake is typically refilled during the months of April and May. During the summer, the reservoir is held at the highest practicable level with a relatively stable pool elevation that usually does not fluctuate more than 1.0 feet below the normal maximum pool elevation of 1,945 feet msl. The surface elevation of Lake Simtustus usually fluctuates less than 0.75 feet per day but exceeds 3.5 feet per day about 25 percent of the time due to flow fluctuations produced by Round Butte.

17. The Reregulating Development is operated to attenuate high and low peak flows produced by the upstream developments. Flow releases are controlled to maintain an average daily flow in the Deschutes River downstream of the Reregulating Dam that approximates the average daily inflow to the project. The Reregulating Reservoir surface elevation fluctuates as much as 27 feet (between 1,435 feet msl and 1,408 feet msl) daily;

however, typical fluctuations are about 15 feet daily. The turbine and spillway gates automatically respond to river stage measurements recorded at a United States Geological Survey (USGS) gage (No. 14092500) located at the dam.[11]

18. Under the original license, flows downstream of the Reregulating Dam are kept at or above a minimum flow of: (1) 3,000 cfs or inflow, if less, from July 1 through February 28; and (2) 3,500 cfs or inflow, if less, from March 1 through June 30.[12] Ramping rates below Reregulating Dam are limited to 0.1 feet per hour and 0.4 feet per day, except from May 15 to October 15, when ramping rates are limited to 0.1 feet per hour and 0.2 feet per day.

SETTLEMENT AGREEMENT

A. Contents

19. The Settlement Agreement establishes measures for the protection, mitigation, and enhancement of resources affected by the project under a new license, and specifies procedures to be used by the parties to ensure the implementation of the license articles contained in the new license, including an adaptive management framework for future collaborative efforts. The Settlement Agreement is divided into eight sections and includes twelve exhibits and six appendices.

20. Sections 1 through 6 establish the general terms and conditions that govern the relationship among the parties and provide for implementation of the Agreement. Section 3 in particular expresses the parties' intent for the Commission to include in the project license proposed articles contained in Exhibit A of the Agreement, and establishes Implementation Committees to work with the licensees in implementing a number of the articles.

[11] The project and the USGS have separate sensing tapes and electrical transmitters connected to the gage's measuring apparatus. The project's transmitter provides flow information for the project operator for control of the Reregulating Development while the USGS's transmitter provides stage and flow data for gage reporting purposes (*See* Settlement Agreement, Appendix C, pp. 1-2).

[12] Under certain circumstances when the inflow to the project has been less than the prescribed minimum flow, discharge below Reregulating Dam has been reduced to a flow less than that of inflow to maintain targeted reservoir surface elevations. *See* EIS at 11-12 and Exhibit B of the license application at B-5.

21. The four types of committees specified by Exhibit K are: the Fish Committee, Terrestrial Resources Working Group, Recreation Resources Working Group, and Shoreline Management Working Group. Each of the committees includes representatives from the licensees, Forest Service, BIA, BLM, the Tribes Branch of Natural Resources, and Oregon DFW. The Fish Committee, Recreation Resources Work Group, and Shoreline Management Work Group include additional entities.[13] The committees are consulted entities in the development and implementation of various study plans, reports, facility designs, and operational plans and are meant to have a pivotal role in the administration of a large variety of post-licensing activities, including changes in protection and enhancement measures on behalf of fish and wildlife, water quality, and recreation.

22. Section 7 establishes a dispute resolution process for purposes of resolving disputed actions and otherwise keeping the Agreement in effect.

23. Section 8 sets forth the general provisions of the Agreement and lists the parties to the Agreement and their primary contacts.

24. The proposed license articles in Exhibit A of the Settlement Agreement, summarized below, specify general license provisions (Proposed Articles 1-7); operating conditions (Proposed Articles 8-16); aquatic resource measures (Proposed Articles 17-41); terrestrial resource measures (Proposed Articles 42-44); recreation, aesthetic, and cultural resource measures (Proposed Articles 45-57); Deschutes River fish habitat studies and enhancement measures (Proposed Articles 58-60); and establishment of a fish and wildlife enhancement fund (Pelton Round Butte Fund) (Proposed Article 61).

25. Proposed Article 1 provides for PGE and the Tribes to establish a Fish Committee, Terrestrial Resources Working Group, Recreation Resources Working Group, Shoreline Management Working Group, and Pelton Round Butte Fund Governing Board, each of which would consist of the licensees and specified agencies and non-governmental organizations. The Fish Committee and Terrestrial Resources, Recreation Resources, and Shoreline Management Working Groups would be responsible for commenting and making recommendations on study plans, reports, facility designs, and operating and implementation plans. The Pelton Round Butte Fund Governing Board would be responsible for making decisions on the use of the Pelton Round Butte Fund.

26. Proposed Article 2 provides the Settlement Agreement parties access to, through, and across the project lands and waters for purposes of inspecting the project facilities and records.

[13] *See* Exhibit K of the Agreement for a complete listing of parties comprising each of the four committees.

27. Proposed Article 3 provides for PGE and the Tribes to enter into an agreement with Jefferson County pursuant to which PGE and the Tribes would fund an additional land-based law enforcement officer and two additional part-time marine or law enforcement personnel to patrol project lands and waterways. The unspecified funding amount would be used for salaries, benefits, training, watercraft, vehicles, and associated law enforcement equipment and supplies.

28. Proposed Article 4 provides for PGE and the Tribes to take immediate action to prevent fish, wildlife, and plant species from being killed, harmed, or endangered due to unanticipated or emergency situations associated with project facilities or project operations. The proposed article also provides for PGE and the Tribes to notify fish and wildlife agencies within 6 hours of the onset of situations that affect federally listed, threatened and endangered species and within 48 hours for non-federally listed species.

29. Proposed Article 5 provides for PGE and the Tribes to obtain a special use authorization from the Forest Service or BLM, as appropriate, for the occupancy and use of federal lands added to the project boundary due to any future amendment of the license. The proposed article also provides for PGE and the Tribes to: (1) obtain written approval from the Forest Service and BLM prior to making changes to project facilities located on federal lands; (2) participate with the Forest Service or BLM in resolving any potential conflicts between project activities and any other authorized activities on federal lands; (3) prepare site-specific plans for habitat and ground-disturbing activities on federal lands as required by the license; and (4) conduct or fund any environmental analysis deemed by the Forest Service or BLM, as appropriate, for site-specific activities or plans associated with the license.

30. Proposed Article 6 establishes a procedure for escalating costs associated with the various funding provisions contained in other proposed articles.

31. Proposed Article 7 provides for PGE and the Tribes, when conducting habitat or ground-disturbing activities on tribal reservation lands, to comply with the requirements of the Tribes' Integrated Resources Management Plan.

32. Proposed Article 8 provides for PGE and the Tribes to implement a project operating plan included with the Settlement Agreement as Exhibit C. Proposed Articles 9-14 specify the plan's operational provisions including stage change limits (Proposed Article 9), gaging of project inflow and outflow (Proposed Articles 10 and 11), minimum operating flows (Proposed Article 12), procedures during long-term low flow conditions (Proposed Article 13), and seasonal drawdown and fluctuation limits (Proposed Article 14).

33. Proposed Article 15 provides for PGE and the Tribes to develop and implement an Operations Compliance Plan to monitor compliance with the operational conditions specified in Proposed Articles 9, 12, and 14.

34. Proposed Article 16 provides for PGE and the Tribes to conduct water quality monitoring pursuant to a water quality monitoring and management plan required by the section 401 of the Clean Water Act certifications for the project.

35. Proposed Article 17 provides for PGE and the Tribes to implement a Fish Passage Plan attached as Exhibit D to the Settlement Agreement.

36. Proposed Article 18 establishes fish passage criteria and goals for the upstream and downstream fish passage facilities specified in Proposed Article 17.

37. Proposed Article 19 provides for PGE and the Tribes to design, construct, operate, and monitor the fishways specified in Proposed Article 17 according to an implementation schedule attached to the Settlement Agreement as Exhibit D.

38. Proposed Article 20 provides for a design and schedule for phased construction of selective water withdrawal and downstream fish passage facilities at the Round Butte dam.

39. Proposed Article 21 provides for PGE and the Tribes to submit all downstream fish design investigations, preliminary design plans and specifications, and final design plans and specifications associated with temporary and permanent downstream fishways at Round Butte dam to the Fish Committee for review and to specified fish agencies for approval. The proposed article also provides for PGE and the Tribes to take a number of modeling and design steps prior to constructing the selective water withdrawal and downstream fish passage facilities.

40. Proposed Article 22 establishes screening criteria for the downstream passage facilities.

41. Proposed Article 23 provides for PGE and the Tribes to evaluate the hydraulic performance of a deep exclusion screen specified in Proposed Article 17 and to conduct fish screen impingement studies.

42. Proposed Article 24 specifies that the design of the permanent downstream collection facility specified in Proposed Article 17 include the ability to add pumps in the future for providing attraction flows.

43. Proposed Article 25 provides for PGE and the Tribes to provide upstream passage using a trap-and-haul process until permanent upstream passage would be implemented per Proposed Article 17. Proposed Article 25 also provides for the development and implementation of a monitoring plan for trap-and-haul upstream passage.

44. Proposed Article 26 provides for preliminary and final design and construction plans for an Adult Release Facility at the Round Butte forebay. The proposed article also provides for the development and implementation of operation and evaluation plans for the facility.

45. Proposed Article 27 provides for PGE and the Tribes to, upon installation of permanent downstream passage facilities at Round Butte dam and within 24 months of achieving downstream survival targets specified in the Fish Passage Plan for Lake Billy Chinook, conduct a study of the feasibility of volitional upstream fish passage at the project and provide a report of the results to the Fish Committee. Proposed Article 27 further provides for PGE and the Tribes to develop and submit to the Fish Committee a plan to implement volitional upstream passage at the project, including testing and verification studies, unless the Fish Committee and specified agencies decide that volitional upstream passage should not be installed. The plan for constructing volitional upstream passage at the project would be due within 24 months of a decision by specified fish agencies that volitional upstream passage at the project should be provided by PGE and the Tribes. In the event the fish agencies decide volitional upstream passage should not proceed as contemplated, the proposed article provides for PGE and the Tribes to file a plan with the Commission to continue trap-and-haul operations and conduct a future feasibility investigation. During any such trap-and-haul operations, PGE and the Tribes would monitor survival and take any feasible measures necessary to comply with the survival standards specified in Proposed Article 25.

46. Proposed Article 28 provides for PGE and the Tribes to transport all juvenile salmonids captured at Round Butte dam between February 1 and July 31 to the lower Deschutes River, bypassing Lake Simtustus and the Reregulating Reservoir. During the remainder of the year, the proposed article provides for PGE and the Tribes, upon the request of the Fish Committee, to transport the juvenile salmonids to Lake Simtustus. If the juveniles would be transported to Lake Simtustus, Proposed Article 28 provides for PGE and the Tribes to file a plan with the Commission to upgrade the east-side upstream fish trap at the Round Butte dam and operate it annually for part or all of the period May 1 through September 30 to capture and return maturing adult resident salmonids back into Lake Billy Chinook.

47. Proposed Article 29 provides for PGE and the Tribes to file a schedule for the development of plans for testing and verification studies described in the Fish Passage Plan included in Exhibit D of the Settlement Agreement. Upon Commission approval of the schedule, Proposed Article 29 provides for PGE and the Tribes to develop the testing

and verification study plans, and implement them upon the approval of specified fish agencies and the Commission. Proposed Article 29 further provides for PGE and the Tribes to file plans with the Commission for making any modifications to facilities needed to ensure safe, timely, and effective fish passage.

48. Proposed Article 30 provides for PGE and the Tribes to develop plans for measures or modifications to the downstream facilities needed to achieve the criteria and goals set forth in Proposed Articles 18 and 22.

49. Proposed Article 31 provides for long-term monitoring of downstream collection facilities as described in the Fish Passage Plan in Exhibit D of the Settlement Agreement.

50. Proposed Article 32 provides for the utilization of annual work plans to document actions consistent with the Fish Passage Plan in Exhibit D of the Settlement Agreement. The proposed article also provides for the filing of annual reports with the Commission documenting Fish Passage Plan activities that occurred during the previous year.

51. Proposed Article 33 provides for PGE and the Tribes to maintain the fishways by keeping them clear of debris and other material that could hinder fish passage.

52. Proposed Article 34 provides for PGE and the Tribes to implement a number of steps in the event that the criteria and goals of Proposed Article 18, as related to temporary downstream facilities, have not been achieved. These steps include notifying the Fish Committee and Commission that the criteria and goals have not been achieved, and as directed by the Fish Committee, either develop a plan to continue operation and testing of temporary downstream passage facilities, begin implementing an alternative fish passage plan, or pursue non-passage mitigation. After approval by the specified fish agencies, the selected plan would be filed with the Commission for its approval.

53. Proposed Article 35 is similar to Proposed Article 34, but applies to contingency actions to be taken in the event that permanent downstream passage facilities do not meet the criteria and goals specified in Proposed Article 18.

54. Proposed Article 36 provides for PGE and the Tribes to enter into an agreement with Oregon DFW to develop a plan for a fish health management program at the project. The plan would include funding for fish health services and supplies associated with production of salmon and steelhead eggs and fry at the project's Round Butte Hatchery, diagnosis of disease in mortalities at fish facilities, and monitoring of disease agents in wild fish populations. Proposed Article 36 further provides for PGE and the Tribes to enter into another agreement with Oregon DFW pursuant to which PGE and the Tribes

would fund one full-time Oregon DFW fish health specialist and one seasonal Oregon DFW Experimental Biological Aide for the interim and part of the final fish passage phases. Funding would be applied to salaries, benefits, training, vehicles, travel, supplies, equipment, and overhead to support the Oregon DFW personnel.

55. Proposed Article 37 provides for PGE and the Tribes to enter into an agreement with Oregon DFW to fund hatchery operations at no more than the current production levels of spring Chinook salmon and summer steelhead for the term of the license. Proposed Article 37 further provides for PGE and the Tribes, within 6 months of entering into the hatchery agreement, to file with the Commission a hatchery improvement plan. In addition, PGE and the Tribes are to file, upon the request of the Fish Committee, a plan with the Commission to undertake changes in equipment to support production of sockeye salmon. PGE and the Tribes, in cooperation with Oregon DFW and the Tribes' BNR, would periodically review the hatchery program to determine whether the program is meeting its goals. The reviews would be funded by PGE and the Tribes. Draft and final reviews would be provided to the Fish Committee.

56. Proposed Article 38 provides for PGE and the Tribes to conduct a Pacific lamprey passage evaluation and mitigation plan as described in the Fish Passage Plan.

57. Proposed Article 39 provides for PGE and the Tribes to develop and implement a native fish monitoring plan to evaluate the effects of reintroducing anadromous fish upstream of the project on resident fish populations.

58. Proposed Article 40 provides for PGE and the Tribes to enter into agreements with Oregon DFW to provide funding for one full-time Oregon DFW fisheries biologist and 10 percent of the cost of an Oregon DFW Facilities Engineer. Funding would be provided for salaries, benefits, training, vehicles, travel, supplies, and equipment and overhead to support the employees. The agreements would specify that the funding is to be used to support Oregon DFW's involvement in fisheries and terrestrial projects conducted pursuant to the terms of the license.

59. Proposed Article 41 provides for PGE and the Tribes to file with the Commission a report documenting the status of interim measures related to fish passage and water rights acquisition on a non-project tributary (Squaw Creek) to the Deschutes River.[14]

[14] The interim measures are listed in Exhibit B of the Settlement Agreement.

60. Proposed Article 42 provides for the development and implementation of a terrestrial resources management plan that includes provisions stipulated in Exhibit E to the Settlement Agreement. The proposed article also requires annual reports documenting implementation of the management plan, implementation of an adaptive management process, and funding of wildlife staff at the project.

61. Proposed Article 43 provides for the implementation of interim terrestrial resource measures while the terrestrial resources management plan is being developed. The measures would include upland vegetation management; exotic and invasive vegetation management; various bald eagle, golden eagle, osprey, and waterfowl surveys; avian power line electrocution assessments; and Pelton fish ladder wildlife protection.

62. Proposed Article 44 provides for PGE and the Tribes to enter into an agreement with the Forest Service pursuant to which PGE and the Tribes would provide the Forest Service with no more than $15,000 annually for the purpose of supporting the Forest Service's and BLM's participation in the development of the Terrestrial Resources Management Plan.

63. Proposed Article 45 provides for the development and implementation of a Recreation Resources Implementation Plan that includes recreation measures described in Exhibit G to the Settlement Agreement as well as measures designed to mitigate for project-related recreation authorized or implemented by entities other than PGE and the Tribes.

64. Proposed Article 46 provides for PGE and the Tribes to fund various recreation measures at the project, including entering into an agreement with the Tribes to provide funding for operation and maintenance of the Tribes' Indian Park Campground and Chinook Island Day-Use Area.

65. Proposed Article 47 provides for PGE and the Tribes to conduct an emergency communications coverage study addressing the ability of emergency response personnel at the project to contact each other and external emergency services and file a report of the results. Based on the results of the study, Proposed Article 47 provides for PGE and the Tribes to fund measures necessary to provide for emergency and safety communications at the project.

66. Proposed Article 48 provides for PGE and the Tribes to develop and implement an Integrated Interpretation and Education Plan to inform the public about resource and project features in the project area. The proposed article provides for a cap of no more than $75,000 for plan development and no more than $20,000 annually (adjusted for inflation) for plan implementation.

67. Proposed Article 49 provides for PGE and the Tribes to develop and implement a Shoreline Management Plan that includes standards and guidelines for shoreline development, installation of new docks, and modification of existing docks.

68. Proposed Article 50 provides for PGE and the Tribes to develop and implement a Shoreline Erosion Plan to monitor and control stream and reservoir shoreline erosion at the project.

69. Proposed Article 51 provides for PGE and the Tribes to develop and file an Aesthetic Resources Protection Plan that includes measures to improve the existing project fish ladder, Pelton Dam Road, Round Butte Switchyard, Pelton Park, Round Butte Overlook Park, and Round Butte dam and powerhouse area. The plan includes measures to improve non-project, non-licensee-owned facilities.

70. Proposed Article 52 provides for PGE and the Tribes to either negotiate an agreement with the Forest Service that would provide for PGE and the Tribes to collect and retain revenue from and operate and maintain specified Forest Service-owned recreation facilities at the project, or to develop a mechanism that would provide for PGE and the Tribes to pay the Forest Service specified percentages of the operation and maintenance costs of the facilities that would exceed revenue produced at the facilities.

71. Proposed Article 53 provides for PGE and the Tribes to enter into an agreement with the Forest Service to provide both annual and one-time funding for upgrades to and maintenance of specified Forest Service roads that lead to the project.

72. Proposed Article 54 provides for PGE and the Tribes to enter into an agreement with the Forest Service to make three payments to the Forest Service for infrastructure maintenance or improvements to the non-project Haystack Reservoir.

73. Proposed Article 55 provides for PGE and the Tribes to enter into an agreement with the BLM to implement measures at and provide funding for various BLM-managed recreation sites located downstream of the project.

74. Proposed Article 56 provides for PGE and the Tribes to enter into an agreement with Jefferson County, Oregon, pursuant to which PGE and the Tribes would fund road maintenance activities on Jefferson County roads affected by the project.

75. Proposed Article 57 provides for implementation of a Programmatic Agreement (PA), including a Cultural Resources Management Plan.

76. Proposed Article 58 provides for PGE and the Tribes to develop and implement a Lower River Gravel Study Plan that includes provisions to study gravel transport downstream of the project and augment gravel where necessary to enhance spawning habitat.

77. Proposed Article 59 provides for PGE and the Tribes to develop and implement a Large Wood Management Plan for the collection, transport, and placement of large wood entering Lake Billy Chinook. Placement of large wood would occur along the reservoir shorelines or in the Deschutes River downstream of the project.

78. Proposed Article 60 provides for PGE and the Tribes to develop and implement a plan for habitat improvements in the Trout Creek watershed located downstream of the project.

79. Proposed Article 61 provides for PGE and the Tribes to establish the Pelton Round Butte Fund with an initial amount of $3.5 million (2003 dollars) and four additional payments in 2007, 2011, 2013, and 2020 totaling $21,500,000 (2003 dollars) subject to adjustment for escalation at specified percentages. The funds would be used for acquisition of water rights and for aquatic, riparian, and wetland habitat protection and enhancements in the basin both upstream and downstream of the project. Distribution and use of funds would be decided by a Governing Board made up of PGE and the Tribes and various specified federal and state fish and wildlife agencies and non-governmental organizations.

80. On October 19, 2004, Commission staff held a technical conference with most of the Settlement Agreement parties to discuss the Settlement Agreement and proposed articles.[15]

B. Discussion

81. The Settlement Agreement addresses the signatories' various environmental concerns while preserving power production at the project. Overall, the terms of the Settlement Agreement achieve an appropriate balance between continued project generation and environmental measures. We commend the parties for their successful efforts to reach consensus on the broad range of issues involved in the operation of this project and the development of a sound framework for a continuing collaborative approach to the management of the project and its resources.

[15] Staff noticed the meeting on September 30, 2004, and invited all interested parties to participate.

82. The new license order we issue today includes the substance of most of the license articles proposed by the Settlement Agreement, with certain modifications as described next.[16] We also discuss those proposed license articles that we do not adopt and the reasons for not doing so.

83. The Settlement Agreement's Proposed Article 1 provides for the establishment of various implementation committees consisting of the licensees and specified agencies and non-governmental organizations. The committees would be responsible for consulting on the development of various plans, reports, and designs specified in the Settlement Agreement, reviewing reports, and making decisions with regard to the distribution of monies from the Pelton Round Butte Fund. Although the license includes the substance of the proposal as Article 402 of the license, we remind the Settlement Agreement parties that the Commission only has jurisdiction over the licensees, and therefore, can only require the licensees' participation on the committees.

84. The Settlement Agreement's Proposed Article 1 also provides that, in the event that consensus among members of the implementation committees with regard to studies, plans, designs, and reports cannot be reached, PGE and the Tribes will delay filing the disputed study, plan, design, or report until the completion of a dispute resolution process specified in section 7.5 of the Settlement Agreement. Although we are including the Proposed Article 1 provisions, including the dispute resolution process, in Article 402 of the license, we are also including a requirement in Article 402 for PGE and the Tribes to file the disputed material prior to the completion of the dispute resolution process if the Commission directs the licensees to do so. We envision the Commission needing to invoke this reservation as a very rare occurrence; however, we are including this requirement to ensure that the Commission's responsibility to administer the terms of the license and ensure accomplishment of project purposes in a timely fashion is not frustrated by an extraordinarily lengthy dispute resolution process.

85. The Settlement Agreement provides for possible modifications to project structures and operations during the license term. For example, certain of the proposed articles contain provisions to implement additional mitigation measures and update plans. While such adaptive management provisions are not uncommon in licenses issued in recent years, some of the proposed articles would put project modifications under the direction of entities comprising the implementation committees. It is, however, the

[16] The specific conditions of the license that incorporate the substance of most of the Settlement Agreement's proposed license articles include ordering paragraphs (H) and (I) and Articles 401 through 436.

licensees' responsibility to obtain the Commission's approval, through appropriate license amendments, for all material amendments to the project and license.[17] The Commission is charged with determining whether amendments will meet the comprehensive development/public interest standards of Federal Power Act (FPA) section 10(a)(1), which continues to govern regulation of a project throughout the term of its license.[18] For this reason, the articles of this license provide for Commission review and approval of any material changes to the project.[19]

86. The Settlement Agreement's Proposed Article 7 provides for PGE and the Tribes, prior to commencing habitat- or ground-disturbing activities on tribal reservation lands, to comply with the Tribes' Integrated Resources Management Plan. The Integrated Resources Management Plan was filed with the Commission by the Tribes on June 13, 2005. Article 408 requires PGE and the Tribes to file an explanation of the relevance of the plan with regard to project-related habitat- or ground-disturbing activities on tribal reservation lands, and reserves the Commission's authority to require them to comply with the plan.

87. The Settlement Agreement's Proposed Article 8 provides for implementation of a Project Operation Plan found in Exhibit C of the Settlement Agreement and as set forth in Proposed Articles 9 through 14 of the Settlement Agreement. We are including the substance of Proposed Articles 9-14 as Articles 409-414 of the license, but we are not including Proposed Article 8, because we find the proposed article to be redundant with the individual operational requirements stipulated in the license.

88. The Settlement Agreement includes provisions for plans to be approved by various Settlement Agreement parties before the plans are filed with the Commission. The Commission has held that the requirement for an entity's prior approval of plans submitted to the Commission is substantially satisfied by a license requirement to consult

[17] *See*, *e.g.*, Standard Articles 2 and 3 of the license, Form L-5, which is published at 54 FPC 1799, 1799-1800 (1975) and incorporated by reference in ordering paragraph (K) below.

[18] *See*, *e.g.*, *S.D. Warren Co.*, 68 FERC ¶ 61,213 at 62,022 (1994).

[19] *See*, *e.g.*, *PacifiCorp*, 105 FERC ¶ 62,207 at 64,460 (2003). A license article cannot provide for the automatic amendment of the license based upon future occurrences. Rather, the licensee is free to file with the Commission an application for amendment of its license, if future conditions warrant.

with various entities prior to plan submission to the Commission for approval and a requirement to explain how it has accommodated the concerns of the consulted entity.[20] Therefore, in those articles requiring the licensees to file a plan with the Commission for approval, we are including our consultation requirement rather than a requirement to obtain prior approval of the plan.

89. The Settlement Agreement's Proposed Articles 34 and 35 provide for PGE and the Tribes to implement alternative mitigation in the event that fish passage for some or all species would ultimately be found to be infeasible at the Round Butte development. The alternative mitigation would be "consistent with the fish passage objective of providing ecosystem integrity and self-sustaining harvestable populations of fish," and would be implemented in place of constructing, operating, and maintaining, or if already constructed, continuing to operate and maintain the permanent downstream fish passage facilities. The amount of mitigation would be equivalent to the remaining net present value of the costs for constructing, operating, and maintaining the permanent downstream passage facilities that would otherwise have been incurred by PGE and the Tribes.

90. We are unable to make a public interest determination with regard to the proposed alternative mitigation measures, because the measures have yet to be identified, and there is uncertainty with regard to the need for the measures. Further, such a license provision would presume a cost for as yet unidentified measures. Therefore, we are not including the alternative mitigation provisions of Proposed Articles 34 and 35 in the license. As discussed below, we are including an article in the license that reserves the Commission's authority to require fishways that may be prescribed by NOAA Fisheries or Interior for the Pelton Round Butte Project. Future fish passage needs could be addressed via this fishway reservation article. Further, the license includes by reference in ordering paragraph (K), Standard Article 15 of Form L-5, which allows fish and wildlife agencies to petition the Commission to reopen the license to include additional measures for fish and wildlife.

[20] *See P.U.D. No. 1 of Okanogan County, WA*, 88 FERC ¶ 61,040 (1999), *order on reh'g*, 90 FERC ¶ 61,169 (2000) (Project No. 10536).

91. The Settlement Agreement's Proposed Article 41 provides for PGE and the Tribes to file a report with the Commission documenting the status of interim fish passage and water acquisition measures listed in Appendix B of the Settlement Agreement.[21] Section 3.3 of the Settlement Agreement states that these measures are to be undertaken prior to issuance of any new license for the project and promptly upon the effective date of the Settlement Agreement. Because PGE and the Tribes have agreed to commence implementation of these measures outside of the license, and therefore, apart from Commission oversight, we see no purpose in requiring PGE and the Tribes to document with the Commission the status of the implementation of the measures.

92. The Settlement Agreement's Proposed Article 42 provides for PGE and the Tribes to file a Terrestrial Resources Implementation Plan (TRMP) for Commission approval to carry out terrestrial resource protection, mitigation, and enhancement measures set forth in Exhibit E of the Settlement Agreement. Management and maintenance activities under the plan would be applied to lands both within and outside of the project boundary, and would include any lands acquired by PGE and the Tribes during the license term.[22] The TRMP would be updated every five years as approved by the Commission. We are including the substance of Proposed Article 42 as Article 422 of the license to the extent the measures apply to lands within the project boundary.[23] We are also including a requirement in Article 422 that the TRMP clearly indicate those lands within the project boundary to which the measures apply.

93. The Settlement Agreement's Proposed Article 43 provides for PGE and the Tribes to implement various interim measures for terrestrial resources while the TRMP is being developed. These interim measures include: upland vegetation management; exotic and

[21] These measures include: (1) constructability/feasibility designs for the selective water withdrawal facility; (2) assistance to Oregon DFW on bull trout spawning surveys in the Metolius River; (3) a determination of the timing and relative numbers of juvenile, non-anadromous sockeye salmon (kokanee) migrating into Lake Billy Chinook; (4) estimation of the spawning escapement of kokanee in the Metolius River and tributaries; (5) radio-tagging of steelhead smolts from the Crooked River basin; and (6) acquiring water rights on Squaw Creek, a tributary to the Deschutes River upstream of the project, to transfer to the state of Oregon to be held as instream water rights.

[22] Non-project lands include Forest Service and BLM roads, campgrounds, trails, and adjacent lands.

[23] At this time, PGE and the Tribes have not stated their intent for the non-project lands, much of which are federal lands, to be brought into the project boundary, with the exception of 10,797 acres of jointly held lands for which we approve inclusion in the project boundary in ordering paragraph (C) of the license.

invasive plant control; raptor nesting, winter use, and roost surveys; avian powerline electrocution and collision surveys and mitigation; waterfowl surveys; and installation of small animal crossings over the Pelton Fish Ladder. Plans for the surveys and design drawings for the construction activities at the Pelton Fish Ladder have not been filed with the Commission. We note that we cannot authorize the activities without knowing the specific steps that PGE and the Tribes will take to implement the measures, which include making changes to project facilities; therefore, although we are including the interim measures to the extent they apply to project lands in Article 423 of the license, we are requiring PGE and the Tribes to file a plan for Commission approval describing the activities and including design drawings for the construction of the wildlife crossings prior to implementing the measures.

94. The Settlement Agreement's Proposed Articles 45, 46, 52, 54, and 55 provide for recreation mitigation or enhancement measures at non-project sites. The final EIS recommended the measures at the non-project sites specified in Proposed Articles 45, 46, and 52,[24] and we are requiring these measures, which will enhance public recreation in the project area. Given our conclusion that these recreation areas are necessary for the project purpose of recreation, we further require that these areas be included within the project boundary.[25]

95. The Settlement Agreement's Proposed Article 45 also provides for PGE and the Tribes to fund a study designed to evaluate the technical feasibility of an off-shore boat moorage program and fund the installation of up to 50 moorages in Lake Billy Chinook if unspecified land management agencies agree to develop, implement, and enforce regulations regarding the use of the moorages and enforce the closure of other areas where boats tie-up to the shore. Although we are including in Article 424 a requirement for PGE and the Tribes to evaluate the technical feasibility of implementing an off-shore boat moorage program at Lake Billy Chinook, we cannot require the installation of up to

[24] The final EIS did not recommend funding of recreation-related measures at the Forest Service-managed Haystack Reservoir and BLM-managed lower Deschutes Wild and Scenic river sites, as set forth in Proposed Articles 54 and 55. The final EIS concluded these measures would not address project-related effects on recreation resources. *See* final EIS at 242-244 and 320. Further, sufficient recreation is provided at the project through the other measures required in this license. Accordingly, the license does not include the measures specified in Proposed Articles 54 and 55.

[25] *See, e.g., Kennebec Water Power Company,* 102 FERC ¶ 61,259 at 61,798 (2003) ("Lands dedicated to project purposes must be included in the project boundary . . ."). The fact that the lands in question are to be within the project boundary does not, however, mean that PGE and the Tribe must acquire title to them; rather, they must have sufficient interests to carry out project purposes. *See Wisconsin Public Service Corporation,* 104 FERC ¶ 61,295 at n.16.

50 moorages to be contingent upon the actions of other entities. Therefore, we are instead requiring PGE and the Tribes to include with the evaluation of the program, any recommendations for the installation and maintenance of up to 50 offshore moorages in Lake Billy Chinook.

96. The Settlement Agreement's Proposed Article 53 provides for PGE and the Tribes to enter into an agreement with the Forest Service whereby PGE and the Tribes would make one-time payments and annual contributions to upgrade and maintain non-project, Forest Service roads leading to the western, Metolius River arm of Lake Billy Chinook. The EIS concluded that upgrading and maintaining these roads would provide for continued public access to the Metolius River arm of Lake Billy Chinook, would help the Forest Service maintain the roads, and would address some of the effects associated with recreational access to remote areas of Lake Billy Chinook.[26] Based on the conclusion that these roads are necessary to support recreation at, and provide access to, the project, in Article 431 we require a plan to provide project-related road upgrades and maintenance, which will address the need for maintenance at project access roads identified by Proposed Article 53. We will not require ongoing actions requiring Commission oversight of non-project lands without those lands being brought into the project boundary. Because we are requiring PGE to take actions with respect to these roads throughout the term of the license, Article 431 requires that they be included within the project boundary.

97. The Settlement Agreement's Proposed Article 54 provides for PGE and the Tribes to enter into an agreement with Jefferson County to upgrade and maintain county-owned roads in the project area. The EIS noted that various of these roads (including Jordan Road, Dizney Lane, and Pelton Dam Road) provide important access to the project area.[27] Therefore, as discussed above with respect to the Forest Service roads, we include in license Article 431 provisions providing for project-related upgrades and maintenance of county roads identified in Proposed Article 431, and will require that these roads be included in the project boundary.

98. The Settlement Agreement's Proposed Article 61 provides for the establishment of the Pelton Round Butte Fund for fish and wildlife habitat enhancements and mitigation throughout the basin. Decisions on fund distribution, including selection of mitigation or enhancement projects, would take place at a future date by a Governing Board composed of various Settlement Agreement parties, including PGE and the Tribes. PGE and the Tribes would be under no ongoing obligation to maintain funded projects once they would be completed.

[26] *See* EIS at 254-55.

[27] *Id.* at 254.

99. The Commission has stated that it generally does not favor such funds but prefers to require licensees to undertake specific measures to resolve project effects, especially in cases where it is not clear to what extent the funds will be used for activities related to the project.[28] In this case, the types of measures that would be funded have been stipulated in section II.B of Exhibit H of the Settlement Agreement and include: land acquisition or lease of riparian lands, wetlands, and uplands; water rights acquisition or lease for instream flows; water conservation; conservation easements, construction of non-project fish passage facilities and removal of non-project barriers to fish migrations; instream habitat improvements; riparian and wetland protection and enhancement; and restoration of fish and wildlife habitats adversely affected by recreation.

100. We note that habitat alteration owing to beaver trapping, agricultural stream diversions, and construction of small hydroelectric dams has been extensive in the Deschutes River basin.[29] Implementation of the funded measures would improve habitat conditions upstream and downstream of the project for aquatic species, including federally listed steelhead, and would increase the likelihood that self-sustaining runs of spring Chinook salmon and summer steelhead would be restored in the upper basin,[30] both of which are goals of the Fish Passage Plan component of the Settlement Agreement.[31] Implementation of the funded measures would also enhance riverine, riparian, and wetland habitats for wildlife.[32] While as noted, we prefer the implementation of specific measures to the establishment of general funds, the parties here have made clear many of the measures which will be paid for by the fund, and have satisfied us that the fund will be used for environmental measures related to the project, including the protection and enhancement of federally listed species. For these reasons, we are including establishment of the Pelton Round Butte Fund in the license as Article 436.

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[28] *See*, *e.g.*, *Alcoa Power Generating, Inc.*, 110 FERC ¶ 61,056 (2005) (P-2169, Tapoco Hydroelectric Project).

[29] *See* final EIS at 100-101.

[30] *See* final EIS at 142-149.

[31] *See* Exhibit D of the Settlement Agreement at 4.

[32] *See* final EIS at 186-187. The fund could be used for terrestrial resource enhancements related to wildlife affected by reservoir operations. However, use of the fund for activities upstream and downstream of the project that support anadromous fish reintroduction has a higher priority. *See* Exhibit H of the Settlement Agreement ("The Pelton Round Butte Fund Implementation Plan") at 5.

101. The Settlement Agreement includes specific dollar limitations (*e.g.*, PGE and the Tribes are to implement an Integrated Interpretation and Education Plan for the project to inform the public about resources and project features in the project area at a total expense to the licensees of no more than $75,000). The Commission has stated that it is important for all entities involved in settlements to know that the Commission considers it the licensee's obligation to complete the measures required by license articles, in the absence of authorization from the Commission to the contrary, and that dollar figures agreed to by the parties are not absolute limitations.[33] Therefore, we are including Article 438 to reserve the Commission's authority to require the licensees to fulfill the requirements of this license notwithstanding the limitations on expenditures included in this license.

WATER QUALITY CERTIFICATION

102. Under Section 401(a)(1) of the Clean Water Act (CWA),[34] the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA[35] provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.

103. The Pelton Round Butte Project has identifiable discharges in the State of Oregon and on tribal lands within the Warm Springs Reservation of Oregon. Therefore, both the State of Oregon and the Confederated Tribes of Warm Springs Water Control Board (Tribes' Water Board), the tribal entity that has regulatory authority to administer a water quality standards program, are empowered by Section 401(a)(1) of the CWA to issue water quality certification.

104. On June 26, 2001, PGE and the Tribes applied to the Tribes' Water Board and the Oregon Division of Environmental Quality (Oregon DEQ) for certification for the Pelton Round Butte Project, which the Tribes' Water Board and Oregon DEQ received on June 25, 2001, and June 26, 2001, respectively. On June 24, 2002, both the Tribes' Water Board and Oregon DEQ issued certifications for the project. Oregon DEQ's

[33] *See Virginia Electric Power Co.*, 110 FERC ¶ 61, 241 (2005) (P-2009, Roanoke Rapids and Gaston Hydroelectric Project).

[34] 33 U.S.C. § 1341(a)(1).

[35] 33 U.S.C. § 1341(d).

certification includes 20 conditions and the Water Board's certification includes 16 conditions, which are set forth in Appendix A and B of this order and incorporated into the license (*see* ordering paragraphs (F) and (G)). The certifications include requirements for water quality management and monitoring (water temperature, dissolved oxygen, pH, total dissolved gases, turbidity, toxic substances, bacteria); nuisance phytoplankton growth control; oil and hazard substances spill prevention and control; ramping rates; reservoir operating levels; minimum flows; project operations; gaging; fish passage; large woody debris management; sediment transport studies; fish habitat enhancements upstream of the project area; and compliance and administration. Article 401 requires the licensees to file, for Commission approval, a plan for mitigation of total dissolved gas noncompliance as stipulated by the Oregon DEQ conditions.

SECTION 4(E) FINDINGS AND CONDITIONS

105. Section 4(e) of the FPA,[36] states that the Commission may issue a license for a project located within a reservation only if it finds that the license will not interfere or be inconsistent with the purposes for which the reservation was created or acquired. Section 3(2) of the FPA[37] defines "reservations" as including national forests, which in some regions encompass grasslands. Portions of the Pelton Round Butte Project occupy lands located within the Deschutes, Mt. Hood, and Willamette National Forests, and the Crooked River National Grassland. These federal lands are under the supervision of the Forest Service.[38]

[36] 16 U.S.C. § 797(e).

[37] 16 U.S.C. § 796(2).

[38] Portions of the headwaters of the project's largest reservoir, Lake Billy Chinook, are located in the Deschutes National Forest. Other portions of Lake Billy Chinook as well as Lake Simtustus (the next reservoir downstream) and part of the Pelton development transmission line, are located in the Crooked River National Grassland.

Portions of Lake Billy Chinook, Lake Simtustus, and the Reregulating Reservoir, along with parts of Pelton Dam and powerhouse, Round Butte Dam and powerhouse, Pelton fish ladder, and the Round Butte transmission lines are located on lands under the supervision of BLM.

The 100-mile-long transmission line from the Round Butte switchyard to PGE's substation occupies 475.3 acres of lands of the Mt. Hood and Willamette National Forests. By order issued August 28, 2002, the Commission determined that it does not have jurisdiction over this line, because it is not the project's primary transmission line, and amended the license to delete the line from the project description (*See* 100 FERC ¶ 62,147). The order provided, however, that the line will remain within the project boundary until the licensees obtain all necessary permits and approvals from the Forest

106. We have reviewed the Organic Administration Act of 1897,[39] which established the purposes for forest reservations, and the presidential proclamations that created the Deschutes,[40] Mt. Hood,[41] and Willamette National Forests,[42] and the Crooked River National Grassland[43] within which the project is located.[44] There is no evidence in this proceeding to indicate that relicensing of the Pelton Round Butte Project would interfere

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Service and BLM for continued use of the federal lands. Article 201 of this license provides for the licensees' payment of annual charges for the use, occupancy, and enjoyment of 475.3 acres of federal lands for the 100-mile-long transmission line right-of-way until the licensees receive all necessary permits and approvals from the Forest Service and BLM.

[39] 16 U.S.C. § 473 *et seq*.

[40] The Deschutes National Forest was created by executive order issued June 13, 1908 (Executive Order No. 816), as part of the Cascade Range Forest Reserve.

[41] The Mt. Hood National Forest was created in 1908 when the northern portion of the Cascade Range Forest Reserve was merged with the Bull Run Reserve and named the Oregon National Forest. The forest was renamed Mt. Hood by executive order issued January 21, 1924 (Executive Order No. 3944).

[42] The Santiam National Forest and the Cascade National Forest were combined to form the Willamette National Forest by executive order issued April 6, 1933 (Executive Order No. 6104).

[43] By administrative order issued June 20, 1960, the Secretary of Agriculture designated 3,804,000 acres of land as national grasslands within the National Forest System under Section 31, Title III of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. §§ 1011 *et seq*, which governs the purchase, conservation, and development of farm land that is considered submarginal or not primarily suitable for cultivation and has been retired from production and made available for Indian, park, forest, migratory bird refuge and agricultural adjustment purposes. *See* United States Department of Agriculture, Forest Service, *The Establishment and Modification of National Forest Boundaries and National Grasslands – A Chronological Record: 1891-1996*, Addendum 1-1 and 1-2 (1997). The Crooked River National Grassland is one of the 19 units permanently held for these purposes by the Department of Agriculture under the Bankhead-Jones Farm Tenant Act.

[44] At the time the forests were created, the Organic Administration Act of 1897, 16 U.S.C. § 475, stipulated that all national forest lands were established and administered only for watershed protection and timber production.

with the purposes of the Deschutes, Mt. Hood, and Willamette National Forests and the Crook River National Grassland. Therefore, we find that this license, as conditioned, will not interfere or be inconsistent with the purposes for which those reservations were created.

107. The Pelton Round Butte Project occupies 2,161.9 acres of tribal lands within the Tribes' Warm Springs Reservation of Oregon,[45] which is under the supervision of Interior's BIA. The Warm Springs Reservation was established by the Treaty of June 25, 1855, between the Tribes and Bands of Middle Oregon and the United States. The Treaty provides that the primary purpose of the reservation is to reserve to the tribes the exclusive right of taking fish in streams running through and bordering the reservation. No allegations have been made that the project would have any adverse effect upon the reservation. As discussed below, Interior has submitted 4(e) conditions for the protection and utilization of the reservation. The environmental measures required in the license will provide additional environmental benefits. We, therefore, find that the license will not interfere or be inconsistent with the purposes for which the reservation was created.

108. Section 4(e) also requires that the Commission include in licenses for projects located within a federal reservation all conditions that the Secretary of the department under whose supervision the reservation falls shall deem necessary for the adequate protection and utilization of the reservation.[46]

109. On November 12, 2002, the Forest Service, a signatory to the Settlement Agreement, filed 23 preliminary conditions.[47] The Forest Service included a schedule for filing final conditions within 90 days of the June 10, 2004, *Federal Register* notice for the final EIS, which would have been September 8, 2004.

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[45] The western side of the project boundary along the Deschutes River from just upstream of the Reregulating Dam to Round Butte Dam and continuing along the northern side of Lake Billy Chinook on the Metolius River arm are tribal reservation lands. Project facilities on reservation lands include portions of the Reregulating Reservoir, Lake Simtustus and the Metolius River arm of Lake Billy Chinook, as well as parts of Pelton Dam and powerhouse and Round Butte Dam and powerhouse. The Reregulating Dam and powerhouse are located entirely on lands jointly owned by PGE and the Tribes.

[46] *Escondido Mutual Water Co. v. LaJolla Band of Mission Indians*, 466 U.S. 765 (1984).

[47] A summary of the preliminary 4(e) conditions is provided in the final EIS at 24-26.

110. On October 4, 2004, the Forest Service filed correspondence concerning its section 4(e) conditions. The Forest Service indicated that it was not modifying its preliminary section 4(e) conditions, but instead filing three new conditions as final 4(e) conditions. Condition No. 1 requires the licensees to comply fully with all provisions of the Settlement Agreement relating to protection, mitigation, and enhancement measures and commitments that implement activities on or affect forest lands and resources. Condition No. 2 requires the Commission's acceptance and incorporation of the Settlement Agreement and the licensees' immediate and complete implementation of the Settlement Agreement measures in accordance with the schedule set forth in the Settlement Agreement. Condition No. 2 further states that in the event either of the requirements is not met, the Forest Service reserves its right to supplement or modify the final 4(e) conditions at a later time. Condition No. 3 reserves the Forest Service's right to add, delete, or revise conditions in the event the licensees, the Forest Service, or other parties withdraw from the Settlement Agreement prior to issuance of a license for the project.

111. Because the Forest Service submitted the final 4(e) conditions after the September 8, 2004, deadline, they are untimely. Typically, in a case where an agency has previously filed preliminary section 4(e) conditions and a schedule for submitting final section 4(e) conditions, and either files the final 4(e) conditions late or does not file them at all, the Commission recognizes the preliminary 4(e) conditions as final conditions.[48] In this instance, however, we do not believe that the Forest Service intends for its preliminary conditions to be included as final conditions, because they are substantially different from the Settlement Agreement. Therefore, we have considered the Forest Service's untimely conditions as recommendations under section 10(a)(1), 16 U.S.C. § 803(a)(1).[49] Conditions 1 and 2 call for the Commission to include in the license the provisions of the Settlement Agreement relating to project lands and facilities located on federal reservations administered by the Forest Service. We are including in the license most of the Proposed License Articles that pertain to project lands and facilities located on federal reservations administered by the Forest Service.

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[48] *See, e.g., City of Springville,* 101 FERC ¶ 62,160 (2002) (In the absence of final section 4(e) conditions, the Forest Service's preliminary 4(e) conditions were adopted as final 4(e) conditions and included in the license).

[49] Section 10(a)(1) requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

112. On November 12, 2002, Interior, also a signatory to the Settlement Agreement, filed on behalf of BIA, BLM, and the U.S. Fish and Wildlife Service (FWS), 31 preliminary conditions for the project pursuant to section 4(e). Interior included a schedule for filing final conditions within 60 days of the December 31, 2003, close of the comment period for the draft EIS, which would have been March 1, 2004. Interior subsequently requested an extension of the schedule to allow time for settlement negotiations, and staff extended the due date for Interior's final conditions to October 1, 2004.

113. Interior timely filed final section 4(e) conditions for the protection and utilization of the Warm Springs Indian Reservation[50] and for the federal lands managed by Interior through BLM[51] on September 30, 2004. In its filing, Interior also asked that the Commission adopt all of the Proposed License Articles in the Settlement Agreement in lieu of its preliminary section 4(e) conditions and that the Commission adopt the license articles and approve the Settlement Agreement without material modification. Interior's 4(e) conditions are set forth in Articles 441 and 442 of the license. A discussion of the Settlement Agreement Proposed License Articles included in the license can be found earlier in the order in the *Settlement Agreement* section.

SECTION 18 FISHWAY PRESCRIPTIONS

114. Section 18 of the FPA, 16 U.S.C. § 811, provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

115. NOAA Fisheries and Interior each filed preliminary fishway prescriptions for the Pelton Round Butte Project on November 12, 2002, along with a schedule for submitting final fishway prescriptions within 60 days of the close of the comment period on the draft EIS. A draft EIS for the project was issued on August 29, 2003, requesting that all comments be filed by December 31, 2004; therefore, the due date for filing final fishway prescriptions for both NOAA Fisheries and Interior was March 1, 2004.

116. On February 12, 2004, NOAA Fisheries requested a modification of their schedule for filing final section 18 fishway prescriptions to a due date of no later than 60 days after the filing of a settlement agreement for the project. On February 27, 2004, Interior requested that the schedule for filing its fishway prescriptions be extended

[50] *See* Attachment B of Interior's filing.

[51] *See* Attachment C of Interior's filing.

indefinitely to allow Interior time to continue settlement negotiations and arrange with the settlement parties a new deadline for filing the final prescriptions. On April 14, 2004, staff extended the due date to file final fishway prescriptions to November 1, 2004, for NOAA Fisheries and to October 1, 2004, for Interior.

117. Interior timely filed its final section 18 fishway prescriptions on September 30, 2004, and NOAA Fisheries timely filed its final prescriptions on October 27, 2004. Interior's and NOAA Fisheries' final fishway prescriptions, which comprise the Settlement Agreement's fish passage requirements, are set out in Appendices C and D to this order, and are made requirements of the license by ordering paragraphs (H) and (I), respectively.

118. Certain of the NOAA Fisheries' and Interior's fishway prescriptions contemplate unspecified, long-term changes to project operations or facilities for the purpose of facilitating safe passage for anadromous salmonids past the project. Article 401 requires the licensees to receive Commission approval through the filing of an application to amend the license prior to implementation of the measures.

119. With their filing of the final fishway prescriptions, both Interior and NOAA Fisheries requested reservation of authority to prescribe fish passage for the project. Consistent with Commission policy, Article 437 of this license reserves the Commission's authority to require fishways that may be prescribed by NOAA Fisheries or Interior for the Pelton Round Butte Project.

ESSENTIAL FISH HABITAT

120. Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act), 16 U.S.C. § 1855(b)(2), requires federal agencies to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat identified under the Act. Under section 305(b)(4)(A) of the Magnuson Stevens Act, NOAA Fisheries is required to provide Essential Fish Habitat Conservation Recommendations for actions that would adversely affect Essential Fish Habitat. Under Section 305(b)(4)(B) of the Magnuson Stevens Act, an agency must, within 30 days after receiving recommended conservation measures from NOAA Fisheries or a Regional Fishery Management Council, describe the measures proposed by the agency for avoiding, mitigating, or offsetting the effects of the agency's activity on the Essential Fish Habitat.

121. The Pacific Fisheries Management Council (PFMC) has designated Essential Fish Habitat for three species of Pacific salmon: coho, Chinook, and Puget Sound pink salmon.[52] Essential Fish Habitat includes all those streams, ponds, lakes, wetlands, and other waterbodies currently or historically accessible to coho and Chinook salmon in Oregon, Washington, Idaho, and California, except upstream of impassable barriers identified by the PFMC. Essential Fish Habitat in the project area includes the Deschutes River and tributaries from the confluence with the Columbia River upstream to Round Butte dam (Chinook and coho salmon) and Lake Billy Chinook (Chinook salmon).

122. On June 18, 2004, Commission staff sent NOAA Fisheries a Biological Evaluation addressing project effects on among other things, Essential Fish Habitat, and concluding that the project would not adversely affect Essential Fish Habitat. On February 28, 2005, NOAA Fisheries filed a response concluding that the project, as proposed by the Settlement Agreement, would adversely affect designated Essential Fish Habitat for Chinook and coho salmon. NOAA Fisheries proposed that the following Essential Fish Habitat conservation measures be included as license conditions:[53]

> (1) The Commission must require the licensees to construct and operate the project facilities identified in the Settlement Agreement; carry out the Fish Passage Plan; adhere to the Fish Passage Schedule; implement the Testing and Verification studies, Long Term Monitoring, Annual Work Plans and Reports, and Native Fish Monitoring Program; implement the Trout Creek Restoration Project, LWD management plan, and gravel augmentation study; and "other measures" identified in the Settlement Agreement.
>
> (2) The Commission must require the licensees to establish the Fish Committee required by the Settlement Agreement, and to adhere to the consultation and dispute resolution provisions of the Settlement Agreement.
>
> (3) The Commission must require the licensees to comply with all project construction activity best management practices (Appendix F of the Settlement Agreement), including measures to control erosion and sedimentation, and measures to control pollutants of any kind.

[52] *See* Pacific Fishery Management Council. 1999. Amendment 14 to the Pacific salmon plan. Appendix A: Description and identification of essential fish habitat, adverse impacts and recommended conservation measures of salmon. Portland, Oregon.

[53] These conservation measures are identical to those required in the Incidental Take Statement included with NOAA Fisheries Biological Opinion filed on February 28, 2005.

123. NOAA Fisheries' conservation recommendations are included in this license as part of the Threatened and Endangered Species Plan required by Article 440.

ENDANGERED SPECIES ACT ISSUES

124. Section 7(a)(2) of the Endangered Species Act of 1973[54] requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

125. Three federally listed species are known to occur in the project vicinity: bald eagle (threatened); the Columbia River bull trout Distinct Population Segment (DPS) (threatened); and the Middle Columbia River steelhead Evolutionarily Significant Unit (ESU) (threatened). Designated critical habitat for bull trout includes Heising Spring, the confluence of Jack Creek with the Metolius River, and a short reach of the Metolius River just upstream of the confluence with Abbot Creek, all of which are located in the Metolius River subbasin upstream of the project. Designated critical habitat downstream of the project is located on the Deschutes River and includes fragmented reaches from the mouth upstream to the project's Reregulating Dam at river mile 100.

126. On April 27, 2004, PGE and the Tribes filed a Biological Evaluation that concluded that licensing the project as proposed by the Settlement Agreement[55] is likely to adversely affect Middle Columbia River steelhead ESU and Columbia River bull trout DPS; may affect, but is not likely to adversely modify or destroy, bull trout critical habitat; and may affect, but is not likely to adversely affect, the bald eagle. Staff's findings in the final EIS for the project were consistent with the Biological Evaluation.

[54] 16 U.S.C. § 1536(a).

[55] At the time, the Settlement Agreement had not been finalized; however, draft environmental measures anticipated to be included in the final settlement had been crafted by the settlement parties.

127. The Commission initiated formal consultation with NOAA Fisheries and Interior by letters dated June 18, 2004.[56] On November 2, 2004, Interior filed a biological opinion that concludes that issuing a license for the project, as recommended by Commission staff, is not likely to jeopardize the continued existence of the Columbia River bull trout DPS. In the same filing, Interior concurred with staff that the proposed project may affect, but is not likely to adversely affect, the bald eagle. On February 28, 2005, NOAA Fisheries filed a biological opinion that concludes that issuing a license for the project, as recommended by Commission staff, is not likely to jeopardize the continued existence of the Middle Columbia River steelhead ESU.

128. As part of their biological opinions, both Interior and NOAA Fisheries included incidental take statements with reasonable and prudent measures to minimize incidental take of bull trout and steelhead, along with terms and conditions to implement the measures. These terms and conditions included requirements to: (1) implement the Settlement Agreement measures that "avoid or minimize affects to" bull trout and steelhead;[57] (2) establish a Fish Committee as set forth by the Settlement Agreement; and (3) implement best management practices, as stipulated by the Settlement Agreement, during construction activities. The terms and conditions are attached to this license as Appendices E and F, and Article 440 of this license requires the licensees to develop a plan, for Commission approval, to comply with the terms and conditions of the incidental take statements.

NATIONAL HISTORIC PRESERVATION ACT ISSUES

129. On December 6, 2004, the Commission, the Advisory Council on Historic Preservation, the Oregon Historic Preservation Officer, and the Tribes' Tribal Historic Preservation Officer executed a Programmatic Agreement (PA) for managing historic properties that may be affected by the relicensing and continued operation of the Pelton Round Project. Article 432 of the new license requires the licensees to implement the

[56] Staff initially attempted to initiate formal consultation with Interior and NOAA Fisheries on September 24, 2003; however, both agencies denied staff's request by letters filed November 6 and November 12, 2003, respectively, because they felt staff did not provide them with sufficient information with regard to project effects on the species and that the time was not yet ripe to initiate consultation in light of settlement negotiations that were occurring at the time.

[57] NOAA Fisheries and FWS did not specify the exact Settlement Agreement terms that "avoid or minimize affects to" bull trout and steelhead.

agreement, including but not limited to a final Cultural Resources Management Plan (CRMP) for the project. This provides protection for all existing and future cultural sites located within the project boundary, and satisfies the Commission's responsibilities under section 106 of the National Historic Preservation Act.[58]

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

130. Section 10(j)(1) of the FPA,[59] requires the Commission, when issuing a license, to include conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,[60] to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

131. Interior filed its initial fish and wildlife recommendations on November 12, 2002. These consisted of 24 detailed recommendations addressing minimum flows; project operations (ramping and reservoir drawdown limits); operations monitoring; water quality monitoring; fish habitat protection and enhancement; fish passage; fish habitat surveys and monitoring; spread of fish diseases; fish genetics in terms of appropriate stocks to reintroduce upstream of the project; fish predation; large woody debris placement; project effects on sediment transport; project effects on Pacific lamprey; effects of anadromous fish reintroduction on resident fish populations; terrestrial resources management; protection of wildlife at fishways; shoreline management; wildlife habitat connectivity; transmission line effects on birds; and project effects on threatened and endangered species, including bald eagle management and protection. On September 30, 2004, Interior filed modifications to its recommendations to incorporate Proposed Articles 8-16, 34-37, 39, 41-43, 49-50, and 58-61 of Exhibit A of the Settlement Agreement.

132. On November 12, 2002, NOAA Fisheries adopted all of Interior's initial section 10(j) recommendations that include provisions for the protection, mitigation, and enhancement of Chinook salmon, sockeye salmon, and steelhead. NOAA Fisheries filed revised recommendations on December 31, 2003, consistent with measures included in

[58] 16 U.S.C. § 470s.

[59] 16 U.S.C. § 803(j)(1).

[60] 16 U.S.C. §§ 661, *et seq.*

an agreement-in-principle that was reached with the settlement parties. On October 27, 2004, NOAA Fisheries filed modifications to its revised recommendations to incorporate Proposed Articles 1-2, 4, 6, 8-13, 15-16, 34-37, 39, and 58-61 of Exhibit A of the Settlement Agreement.

133. Oregon DFW filed fish and wildlife recommendations on November 12, 2002. These consisted of 33 recommendations addressing minimum flows; project operations (ramping and reservoir drawdown limits); operations monitoring; fish habitat protection and enhancement; fish passage; fish habitat surveys and monitoring; fish health monitoring; fish entrainment monitoring; fish predation; fish hatchery upgrades; large woody debris placement; project effects on sediment transport; effects of anadromous fish reintroduction on resident fish populations; terrestrial resources management; off-site terrestrial habitat acquisition; mule deer winter range studies; protection of wildlife at fishways; effectiveness monitoring of existing wildlife crossings; shoreline management; riparian and wetland habitat restoration and improvements; invasive weed management; project effects on threatened and endangered species, including bald eagle management and protection and bat habitat improvements; funding for Jefferson County personnel to patrol the project area; project removal and site restoration in the event of project decommissioning; license term limits; and reserved authority to file modified recommendations. Oregon DFW filed revised recommendations on December 29, 2003, consistent with measures included in an agreement-in-principle that was reached with the settlement parties. On August 18, 2004, Oregon DFW filed modifications to its revised recommendations to incorporate Proposed Articles 1-4, 6, 8-15, 17-43, 45, 49-50, and 58-61 of Exhibit A of the Settlement Agreement.

134. The Settlement Agreement's proposed articles are generally consistent with the 110 separate recommendations that Commission staff considered in the final EIS.[61] The final EIS found certain recommendations to be outside of the scope of section 10(j), because they are not specific measures to protect fish and wildlife. These include recommendations for the establishment of a shoreline working group; funding of law enforcement officials at the project; funding of Oregon DFW personnel to coordinate Oregon DFW's involvement in the implementation of fisheries and terrestrial license requirements; development and implementation of recreation, shoreline management, and shoreline erosion plans; development and implementation of plans for off-site fish and wildlife habitat; and establishment of funds to be directed toward off-site fish and wildlife habitat enhancements.

[61] Table 35 of the final EIS lists each of the recommendations and the agency or agencies that recommended it. Table 35 also specifies, as to each recommendation, whether it is within the scope of section 10(j) and whether staff recommended its adoption.

135. The recommendations reflect the provisions of the Settlement Agreement, which we adopt as license conditions through ordering paragraphs incorporating mandatory license conditions or through license articles. Those recommendations that do not fall within the scope of section 10(j) are instead considered under section 10(a)(1), 16 U.S.C. § 803(a)(1). The extent to which the license adopts those measures is discussed earlier in this order in the *Settlement Agreement* section.

COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM

136. Under section 4(h) of the Pacific Northwest Power Planning and Conservation Act, 16 U.S.C. § 839(h), the Northwest Power Planning Council (Council) developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance the fish and wildlife resources associated with development and operation of hydroelectric projects within the Columbia River Basin. Section 4(h) states that responsible federal and state agencies should provide equitable treatment for fish and wildlife resources, in addition to other purposes for which hydropower is developed, and that these agencies should take into account, to the fullest extent practicable, the program adopted under the Pacific Northwest Power Planning and Conservation Act. Specific provisions affecting non-federal hydropower projects are outlined in Appendix B of the Program.

137. The license, which among other things, includes reservoir stage change limits (Article 409); minimum flows (Article 412); reservoir drawdown and fluctuation limits (Article 414); fish passage requirements (ordering paragraphs (H) and (I)); native fish monitoring (Article 421); terrestrial resources management (Articles 422 and 423); fish spawning gravel augmentation (Article 433); large river wood management (Article 434), lower Deschutes River habitat enhancements (Article 435); and threatened and endangered species protection (Article 440) is consistent with the applicable provisions of the Program, as discussed in more detail in the final EIS. Article 439 reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the Program.

WILD AND SCENIC RIVER DESIGNATIONS

138. Section 7(a) of the Wild and Scenic Rivers Act (Rivers Act), 16 U.S.C. § 1278(a), bars the Commission from licensing "the construction of" any dam, water conduit, or other project works "on or directly affecting any river which is designated as a component of the national wild and scenic rivers system" or from licensing any project

works below or above a wild or scenic river that would "invade" or "unreasonably diminish" the scenic, recreational and fish and wildlife values there. Section 7(a) does not bar the issuance of a license for the continued operation of the project, provided no new construction is proposed in the wild and scenic river.[62]

Lower Deschutes River

139. The Pelton Reregulating Dam is located near a portion of the lower Deschutes River that Congress designated a Wild and Scenic River under the Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Oregon River Act).[63] In relationship to the Pelton Round Butte Project, the Wild and Scenic River corridor is immediately upstream and downstream of the project, but no part of the project is located in the corridor.

140. PGE and the Tribes propose replacement of an existing intake tower at the Reregulating Dam with a new intake tower, which will serve as a selective water withdrawal facility and fishway. The entrance to the proposed fishway is at the boundary of the lower Deschutes Wild and Scenic River corridor.

141. BLM and the Forest Service have determined that the proposed project will not invade the lower Deschutes Wild and Scenic River area, because the licensees do not propose construction of any new project works in the corridor. BLM and the Forest Service have also determined that the proposed project should not unreasonably diminish scenic and wildlife values in the area or have a negative effect on the fisheries resources and wildlife habitat. BLM and the Forest Service further find that the adverse effects of the proposed project, *i.e.*, sediment conditions, which existed at the date of the river's designation, will not unreasonably diminish recreation and fisheries values provided the license articles proposed in the Settlement Agreement are adopted in their entirety.

Middle Deschutes, Lower Crooked, and Metolius Rivers

142. In relationship to the Pelton Round Butte Project, the Wild and Scenic River corridors of the Middle Deschutes, Lower Crooked, and Metolius Rivers are upstream of the project and outside of the project boundary.

143. Pursuant to section 7, BLM and the Forest Service jointly determined for the Middle Deschutes and Lower Crooked Rivers, and the Forest Service determined for the Metolius River, that the proposed project will not invade the designated areas, because the licensees do not propose construction of any project works in the wild and scenic

[62] *See Northern States Power Company*, 67 FERC ¶ 61,282 (1994).

[63] *See* Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. No. 100-557.

river corridors and do not plan to raise the height of any dams or other project facilities. BLM and the Forest Service further determined for the respective rivers that the potential adverse effects of the project will not unreasonably diminish the scenic, recreation, wildlife, and fisheries values present in the areas.

TRANSMISSION LINES

144. On January 30, 2002 (supplemented April 19, 2002), PGE and the Tribes filed an amendment application to delete the 100-mile-long, 230-kV Bethel-Round Butte transmission line from the project. The transmission line is partially located on federal lands managed by the Forest Service. By order issued August 28, 2002,[64] the Chief of the Engineering & Jurisdiction Branch, Division of Hydropower Administration and Compliance, issued an order finding that the transmission line is not required to be licensed. The amendment order removed the transmission line from the project description but, to prevent any gap in federal authorization for the portion of the transmission line on federal lands (475.3 acres), the order kept the line in the project boundary and under Commission jurisdiction until PGE and the Tribes obtained the necessary permits for the use and occupancy of National Forest Lands.

145. To date, PGE and the Tribes have not filed copies of the necessary permits with the Commission; therefore, ordering paragraphs (D) and (E) of the new license require that the facilities and lands deleted from the project by the April 28, 2002, amendment remain within the project boundary and under Commission jurisdiction until PGE and the Tribes file the required permits with the Commission.

146. In a March 29, 2002, letter to the Commission, PGE and the Tribes notified the Commission that Exhibit A of the license application should be corrected to indicate that the only primary transmission lines for the Reregulating development are 6.9-kV leads (about 200 feet in length) from the generator to a 6,900-volt bus at the step-up transformer located adjacent to the powerhouse. The approvals of Exhibits A, F, and G in order paragraph B reflect this change.

STATE AND FEDERAL COMPREHENSIVE PLANS

147. Section l0(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways

[64] 100 FERC ¶ 62,147.

affected by the project.[65] Under Section 10(a)(2)(A), federal and state agencies filed 137 comprehensive plans that address various resources in Oregon. Of these, the staff identified and reviewed 65 comprehensive plans that are relevant to this project.[66] No conflicts were found.

APPLICANTS' PLANS AND CAPABILITIES

148. In accordance with sections 10(a)(2)(c) and 15(a) of the FPA,[67] staff evaluated PGE's and the Tribes' record as licensees with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission service; (G) cost effectiveness of plans; and (H) actions affecting the public. We accept the staff's findings in each of the following areas.

A. Conservation Efforts

149. FPA section 10(a)(2)(C) requires the Commission to consider the extent of electric consumption efficiency programs in the case of license applicants primarily engaged in the generation or sale of electric power. PGE is such an applicant. PGE has engaged in energy efficiency programs since 1970 and continues to offer programs that promote the use of energy efficient lighting and appliances. PGE's integrated resource planning program proposes other demand side energy consumption efficiency measures such as time-of-use metering and direct load control to better manage peak demand by its customers. Through these programs, PGE is making satisfactory efforts to conserve electricity and reduce peak hour demands.

B. Compliance History and Ability to Comply with the New License

150. Based on a review of PGE's and the Tribes' compliance with the terms and conditions of the existing license, staff found that PGE's overall record of making timely filings and of compliance with its license is satisfactory.

[65] Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19.

[66] *See* final EIS at Appendix D for a list of the applicable plans.

[67] 16 U.S.C. §§ 803(a)(2)(C) and 808(a).

C. Safe Management, Operation, and Maintenance of the Project

151. Staff reviewed PGE's and the Tribes' management, operation, and maintenance of the Pelton Round Butte Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. The project dam has a high hazard potential classification. Staff concluded that the dam and other project works are safe, and that there is no reason to believe that PGE cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

152. Staff reviewed PGE's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Staff found that PGE has been operating the project in an efficient manner within the constraints of the existing license and is likely to continue to do so under a new license.

E. Need for Power

153. PGE is an integrated electric utility serving nearly 1.4 million people in the Portland, Oregon, metropolitan area. PGE has over 730,000 retail residential, commercial, and industrial customers. Power from the Pelton and Round Butte developments is sold to PGE customers and is transmitted via PGE's transmission and distribution system. The 247.12-MW Round Butte and 100.8-MW Pelton developments provide approximately 20 percent of PGE's 2,022-MW generating capability, which includes hydroelectric, coal, and gas facilities (PGE, 2003). The project, with its large storage reservoir, is typically operated to provide power during daily load peaks. The operational flexibility of the project is used by PGE to maintain the stability and reliability of the PGE system.

154. The Tribes market the power from the 18.9-MW generating facilities at the Reregulating development as a wholesale utility and sell the power to PGE or to others on the open market.

155. PGE is part of the Western Electricity Coordinating Council (WECC), which is composed of generators and suppliers in 12 western states, Canada, and Mexico. PGE and its resources are located within the northwest subregion of the WECC. In its 10-year Coordinated Plan Summary for the period 2004-2013, the WECC estimates that its peak summer demand will increase by an average annual compound rate of 2.2 percent to about 171,000 MW by 2013. For the 10-year period, the region projects

the addition of a net amount of about 23,000 MW of new resources, 96 percent of which is combined cycle combustion turbine capacity. With these additions, WECC projects adequate capacity to meet its estimated summer load, including a 15-percent reserve margin, through 2013.

156. In summary, the electric power provided by the Pelton Round Butte Hydroelectric Project supplies part of the current need for power by PGE's customers and the region, and can continue to contribute to meeting those needs with a clean source of energy, thereby avoiding the use of a like amount of fossil-fueled generation and its associated atmospheric emissions.

F. Transmission Services

157. The project's transmission facilities that are required to be licensed include the three 230-kV lines each extending about 2,800 feet from the Round Butte powerhouse to the Round Butte switchyard; the 230-kV primary transmission line that extends south about 7.9 miles from Pelton Development's powerhouse to the Round Butte Switchyard; and the 6.9-kV leads that extend about 200 feet connecting the generator of the Pelton Re-regulating Development to the 6.9-kV bus at the step-up transformers located adjacent to the powerhouse. PGE proposes no changes that would affect transmission facilities.[68]

G. Cost Effectiveness of Plans

158. The Pelton Round Butte Project develops nearly 100 percent of the hydropower flow potential of the site and, as such, represents a cost-effective level of development. In addition, PGE is proposing and this license requires several modifications to project facilities for more efficient operation, and for the protection and enhancement of fish and other environmental resources. PGE's past record as a licensee indicates it is likely to carry out these measures in a cost-effective manner.

[68] As noted above, on August 28, 2002, under the previous license, the Commission approved a license amendment deleting the 100-mile-long, 230-kV Bethel to Round Butte transmission line from the project license. The amendment order requires that this transmission line remain under Commission jurisdiction until PGE accepts a special use permit from the appropriate federal land management agencies.

H. Actions Affecting the Public

159. In its license application, PGE and the Tribes cited numerous examples of actions they have taken which benefit natural resources and the economy of the Deschutes River Basin including working cooperatively with fish and wildlife agencies on research and enhancement of fish and wildlife resources, and development of recreation facilities to improve public access to and enjoyment of project lands and waters.

PROJECT ECONOMICS

160. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,[69] the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

161. As licensed herein under the terms of the Settlement Agreement as incorporated into this license, the Pelton Round Butte Hydroelectric Project will generate an average of 1,591,000 megawatt-hours (MWh) of electricity a year at a total annual cost of about $26.3 million (about $17/MWh). Based on recent market prices in the northwest region, the annual value of the project power is about $76.1 million (about $48/MWh), resulting in a net annual benefit of about $49.8 million (about $31/MWh).

162. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

163. Ancillary services are now mostly priced at rates that recover only the cost of providing the electric service at issue, which do not resemble the prices that would occur in competitive markets. As competitive markets for ancillary services begin to develop, the ability of hydro projects to provide ancillary services to the system will increase the

[69] 72 FERC ¶ 61,027 (1995).

benefits of the project. The Pelton Round Butte Project, with the large amount of storage available in Lake Billy Chinook, is PGE's primary load following resource for meeting the daily peak demands of its customers. The project will retain these valuable ancillary service benefits under the terms of the Settlement Agreement and this license.

COMPREHENSIVE DEVELOPMENT

164. Sections 4(e) and 10(a)(1) of the FPA,[70] respectively, require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

165. The EIS for the Pelton Round Butte Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of this license.

166. Based on our independent review and evaluation of the Pelton Round Butte Project, recommendations from the resource agencies and other stakeholders, the Settlement Agreement, and the no-action alternative, as documented in the EIS, we have selected the Settlement Agreement with modifications, as discussed herein, as the preferred alternative, which we conclude is best adapted to a comprehensive plan for developing the Deschutes, Crooked and Metolius Rivers. We selected this alternative because: (1) issuance of a new license would serve to maintain a beneficial, dependable, and an inexpensive source of electric energy; (2) the required environmental measures would protect and enhance fish and wildlife resources, water quality, recreational resources and historic properties; and (3) the 366.82-MW of electric energy generated from renewable resource would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

[70] 16 U.S.C. §§ 797(e) and 803(a)(1).

LICENSE TERM

167. Section 15(e) of the FPA,[71] provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.[72]

168. This license authorizes an extensive amount of environmental measures, including new construction. As part of the Settlement Agreement, the signatories agree to a new 50-year license term. For the above reasons, and because the term of license was likely an important element in the negotiations that led to the Settlement Agreement, we are issuing this new license for a term of 50 years.

The Commission orders:

(A) This license is issued to PGE and the Tribes (licensees) to operate and maintain the Pelton Round Butte Project for a period of 50 years, effective the first day of the month in which this order is issued. The license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G included in the application for new license, filed on June 29, 2001, to the Commission Secretary.

Exhibit G-	FERC Drawing No. 2030-	Showing
1	1023	Project Boundary and Location Map - Round Butte Development
2	1024	Project Boundary and Location Map - Round Butte Development
3	1025	Project Boundary and Location Map - Round Butte Development

[71] 16 U.S.C. § 808(e).

[72] *See Wisconsin Power Company*, 94 FERC ¶ 61,164 (2001).

Exhibit G-	FERC Drawing No. 2030-	Showing
4	1026	Project Boundary and Location Map - Round Butte Development
5	1027	Project Boundary and Location Map - Round Butte Development
6	1028	Project Boundary and Location Map - Round Butte Development
7	1029	Project Boundary and Location Map - Round Butte Development
8	1030	Project Boundary and Location Map - Round Butte Development
9	1031	Project Boundary and Location Map - Round Butte Development
10	1032	Project Boundary and Location Map - Round Butte Development
11	1033	Project Boundary and Location Map - Round Butte Development
12	1034	Project Boundary and Location Map - Round Butte Development
13	1035	Project Boundary and Location Map - Pelton Development
14	1036	Project Boundary and Location Map - Pelton Development
15	1037	Project Boundary and Location Map - Pelton Development
16	1038	Project Boundary and Location Map - Pelton Development
17	1039	Project Boundary and Location Map - Pelton Development
18	1040	Project Boundary and Location Map - Pelton Development
19	1041	Project Boundary and Location Map - Pelton Development
20	1042	Project Boundary and Location Map - Wildlife Mitigation Lands
21	1043	Project Boundary and Location Map - Wildlife Mitigation Lands
22	1044	Project Boundary and Location Map - Wildlife Mitigation Lands
23	1045	Project Transmission Line - Pelton Development
24	1046	Project Transmission Line - Pelton Development
25	1047	Pelton-Round Butte Project Service Road
26	1048	12.5-kV Pelton-Round Butte Service Line
27	1049	12.5-kV Pelton-Round Butte Service Line

The following Exhibit G drawings show the location of the non-project Bethel-Round Butte transmission line which remains under Commission jurisdiction until PGE and the Tribes receive all necessary permits and approvals from the U.S. Forest Service and the U.S. Bureau of Land Management, as appropriate, for the continued use of federal lands.

Exhibit G-	FERC Drawing No. 2030-	Showing
28	1050	Bethel-Round Butte Transmission Line
29	1051	Bethel-Round Butte Transmission Line
30	1052	Bethel-Round Butte Transmission Line
31	1053	Bethel-Round Butte Transmission Line
32	1054	Bethel-Round Butte Transmission Line
33	1055	Bethel-Round Butte Transmission Line
34	1056	Bethel-Round Butte Transmission Line
35	1057	Bethel-Round Butte Transmission Line

(2) Project works consisting of:

The **Round Butte Development** consisting of: (1) a 440-foot-high, 1,382-foot-long rockfill, embankment dam; (2) a 4,000 acre reservoir (Lake Billy Chinook) with a gross storage capacity of 535,000-acre-feet and a maximum useable storage volume of 274,000 acre-feet (limited by this license to 76,000 acre-feet with a maximum drawdown of 20 feet) at a normal pool elevation at 1,945.0 feet mean sea level; (3) a concrete spillway intake structure topped with a 30-foot-high, 36-foot-wide radial gate; (4) an 1,800-foot-long, 21-foot-diameter spillway tunnel; (5) an 85-foot-long, varying in height and width, concrete, powerhouse intake structure; (6) a 1,425-foot-long, 23-foot-diameter power tunnel; (7) a 170-foot-long, 116-foot-wide, concrete powerhouse containing three Francis-type, turbine generating units with a total capacity of 247.050 MW and one 70-kilowatt (kW) turbine generating unit for a total installed capacity of 247.12 MW; (8) a 30-inch-diameter intake pipe and support structure, a 10-foot square platform, and a turbine discharge pipe for the 70-kW turbine; (9) three 2,800-foot-long, 230-kV primary transmission lines that extend from the transformers at the powerhouse to the Round Butte Switchyard; and (10) appurtenant facilities.

The **Pelton Development** consisting of: (1) 636-foot-long, 204-foot-high, concrete arch dam with a crest elevation of 1,585 feet msl; (2) a 7-mile-long, 540 acre reservoir (Lake Simtustus) with a gross storage capacity of 31,000 acre-feet and useable storage volume of 3,700 acre-feet at normal maximum water surface elevation of 1,580 feet mean sea level; (3) a concrete spillway equipped with two, 34-foot-wide, 22-foot-high steel Tainter gates; (4) a turbine intake system built into the upstream face of the dam and consisting of three 16-foot-diameter, approximately 100-foot-long, penstocks, equipped with trash racks and inlet gates at the face of the dam; (5) a 76-foot-long, 168-foot-wide, semi-outdoor type powerhouse containing three, Francis-type turbine generating units with a total installed capacity of 100.8 MW; (6) a 7.9-mile-long, 230-kV primary transmission line from the Pelton powerhouse to the Round Butte Switchyard; and (7) appurtenant facilities.

The **Reregulating Development** consisting of: (1) a 1,067-foot-long, 88-foot-high rockfill dam with a crest elevation of 1,402 feet msl; (2) a 2.5-mile-long, 190 acre reservoir with a gross storage capacity of 3,500 acre-feet and useable storage volume of 3,270 acre-feet at normal maximum water surface elevation of 1,435 feet mean sea level; (3) a concrete spillway equipped with four, 20-foot-wide, 14-foot-high steel gates; (4) a non-operating 3-mile-long fishway extending from the tailrace upstream to the forebay of the Pelton development; (5) a turbine intake on the upstream face of the dam, equipped with a 55-foot-high, 34-foot-wide trash rack; (6) a 159-foot-long, 44-foot-wide concrete powerhouse containing a single, 18.9-MW bulb-type turbine generator; (7) the 6.9-kV leads that extend about 200 feet connecting the generator of the Pelton Re-regulating Development to the 6.9-kV bus at the step-up transformers located adjacent to the powerhouse; and (8) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A:

All of Exhibit A, modified by deleting from the description of project facilities those portions describing the 100-mile-long, 230-kV transmission line from the Round Butte switchyard to Bethel, a 3.2-mile-long, 69-kV transmission line from the Reregulating Development to the Warm Springs Substation, and the 10.5-mile-long, 12.5-kV transmission line from the Round Butte switchyard to the Reregulating Development.

Exhibit F:

Exhibit F-	FERC Drawing No. 2030-	Showing
1	1001	Round Butte - General Plan, Dam and Powerhouse
2	1002	Round Butte - Dam Sections
3	1003	Round Butte - Spillway Diversion and Power Tunnels
4	1004	Round Butte - Spillway and Power Tunnel Intake
5	1005	Round Butte - Powerhouse Plans and Sections
6	1006	Round Butte - Fish Facilities, Upstream Migrant Structure
7	1007	Round Butte - Fish Facilities, Downstream Migrant Structures
8	1008	Round Butte - Fish Facilities, Downstream Migrant Lock Tank
9	1009	Round Butte - Fish Hatchery
10	1010	Round Butte - Single Line Electrical Diagram
11	1011	Round Butte - Single Line Electrical Diagram
12	1012	Round Butte - Switchyard Arrangement
13	1013	Pelton - General Plan and Sections
14	1014	Pelton - Powerhouse Plans
15	1015	Pelton - Powerhouse Cross-Section
16	1016	Pelton - Round Butte - Single Line Electrical Diagram
17	1017	Reregulating - Powerhouse and Fish Facilities
18	1018	Reregulating - Powerhouse Plan
19	1019	Reregulating - Powerhouse Transverse Section
20	1020	Reregulating - Fish Ladder/Rearing Ponds and Waterfowl Pond
21	1021	Reregulating - Single Line Electrical Diagram

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A, F, and G, as designated in ordering paragraph (B) above, are approved and made a part of this license. Exhibits F and G shall be filed in the Commission's electronic file format as specified in Article 203. The project boundary in Exhibit G shall include 10,797 acres of lands proposed in Exhibit A, section I.D and approved by this license for inclusion in the project boundary.

(D) Commission jurisdiction over the non-project Bethel-Round Butte transmission line deleted from the project by amendment order 100 FERC ¶ 62,147 (2002), is terminated, effective on the date the licensees receive all necessary permits and approvals from the U.S. Forest Service and Bureau of Land Management, as applicable, for the continued use of federal lands. The licensees shall file copies of all permits and approvals with the Commission within 30 days of receiving the permits or approvals.

(E) Within 60 days of the termination of Commission jurisdiction over the Bethel-Round Butte transmission line as specified in ordering paragraph (D), the licensees shall file for Commission approval, revised exhibits A, F, and G drawings showing and describing the project features, boundaries, and facilities, as well as a statement indicating the revised amount of federal lands occupied by the project so the Commission can amend Article 201 of the license regarding the licensees' payment for the use of federal lands.

(F) This license is subject to the conditions submitted by the Oregon Division of Environmental Quality under section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(G) This license is subject to the conditions submitted by the Water Control Board of the Confederated Tribes of the Warm Springs Reservation of Oregon under section 401 of the Clean Water Act, as those conditions are set forth in Appendix B to this order.

(H) This license is subject to the conditions submitted by the Secretary of the U.S. Department of the Interior under section 18 of the FPA, as set forth in Appendix C to this order.

(I) This license is subject to the conditions submitted by the Secretary of the U.S. Department of Commerce under section 18 of the FPA, as set forth in Appendix D to this order.

(J) The following plans filed with the Settlement Agreement on July 30, 2004, as modified by the articles of this license, are approved and made a part of the license: (1) Project Operating Plan (Exhibit C to the Settlement Agreement); (2) Fish Passage Plan (Exhibit D to the Settlement Agreement); (3) Pelton Round Butte Fund Implementation Plan (Exhibit H to the Settlement Agreement); and (4) Cultural Resources Management Plan (Exhibit J to the Settlement Agreement).

(K) This license is subject to the articles set forth in Form L-5, entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," 54 FPC 1792, 1799 (October 1975), and the following additional articles:

Article 201. ***Administrative Annual Charges***. The licensees shall pay the United States the following annual charges, effective as of the first day of the month in which this license is issued, for the purposes of:

(A) Reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 366,820 kilowatts.

(B) Recompensing the United States for the use, occupancy and enjoyment of 3,022.60 acres of its lands, other than for transmission line right-of-way.

(C) Recompensing the United States for the use, occupancy and enjoyment of 481.14 acres of its lands, for transmission line right-of-way. Upon compliance with ordering paragraphs (D) and (E) of this order, the Commission will issue an order revising this article of the license, changing the amount of federal lands for transmission line use from 481.14 to 5.84 acres, or such other acreage as is determined at that time.

(D) All annual charges for the project's use of 2,161.9 acres of tribal reservation lands is deemed satisfied by fulfillment of the applicable terms of the Long-Term Global Settlement and Compensation Agreement, dated April 12, 2000, and approved by the Commission on November 21, 2000 (100 FERC ¶ 62,147).

(E) If modifications are made to the project boundary that involve federal lands during the license term, the Commission will adjust the annual charges accordingly.

Article 202. ***Amortization Reserves.*** Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensees shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus

earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensees shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensees shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensees shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensees' long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203. ***Exhibit Drawings.*** Within 45 days of the date of issuance of the license, the licensees shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (i.e., P-1234-1001 through P-1234-###) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The remaining set of aperture cards and a copy of Form FERC-587 shall be filed with the Bureau of Land Management office at the following address:

State Director
Bureau of Land Management
PO Box 2965
Portland, OR 97208-2965

(b) The licensees shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. Exhibit F drawings must be identified as (CEII) material under 18 CFR §388.113(c). Exhibit G drawings must be identified as (NIP) material under 18 CFR §388.112. Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-1234-####, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION – 300 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)
FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points, arranged in a triangular format for GIS geo-referencing to vector data. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing. In addition, each project boundary drawing must be stamped by a registered land surveyor.

(c) The licensees shall file three separate sets of the project boundary data in a geo-referenced vector electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-1234, boundary vector data, MM-DD-YYYY.SHP]. The geo-referenced electronic boundary data file must be positionally accurate to ±40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-1234, project boundary metadata, MM-DD-YYYY.TXT].

Article 204. ***Headwater Benefits.*** If the licensees' project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensees shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. ***Revised Exhibits.*** Within 90 days of the completion of any construction of facilities, modification of project boundaries, or any other action required by this license that results in changes to Exhibits A, F and G, the licensees shall file for Commission approval revised Exhibits A, F, and G, as appropriate, to show those project facilities and lands as built or modified. The exhibits shall have sufficient detail to adequately delineate the relative location of project features. The licensees shall submit six copies to the Commission, one copy to the Commission's Portland Regional Engineer, and one to the Director, Division of Hydropower Administration and Compliance.

Article 302. ***Review and Approval of Final Plans and Specifications.*** At least 60 days before starting any license-related construction activities, the licensees shall submit one copy to the Division of Dam Safety and Inspections, Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of a supporting design report and final contract plans and specifications. The Commission may require changes to the plans and specifications to assure the work is completed in a safe and environmentally sound manner. Construction may not commence until authorized by the Regional Engineer.

Article 303. ***Quality Control and Inspection Program.*** At least 60 days before starting any license-related construction activities, the licensees shall submit one copy to the Division of Dam Safety and Inspections, Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include a sediment and erosion control plan.

Article 304. ***Cofferdam Construction Drawings.*** Before starting construction, the licensees shall review and approve the design of contractor designed cofferdams and deep excavations. At least 30 days before starting construction of the cofferdams, the licensees shall submit one copy to the Division of Dam Safety and Inspections, Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 305. ***Temporary Emergency Action Plan.*** At least 60 days before starting construction, the licensees shall submit one copy to the Division of Dam Safety and Inspections, Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in case failure of a cofferdam, large sediment control structure, or any other water retaining structure could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 401. ***Supplemental Requirements to Mandatory Conditions.***

(a) Requirement to File Plan for Commission Approval.

Condition H.2 of Appendix A requires the licensees to prepare a Total Dissolved Gas Noncompliance Mitigation Plan within 60 days of identifying excessive total dissolved gas concentrations. The plan shall also be submitted to the Commission for approval and must be approved by the Commission before being implemented by the licensees.

The licensees shall submit to the Commission documentation of its consultation, copies of comments and recommendations made in connection with the plan, and a description of how the plan accommodates the comments and recommendations. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the plan becomes a requirement of the license, and the licensees shall implement the plan, including any changes required by the Commission.

(b) Requirement to File Documentation of Completion

The licensees shall file with the Commission documentation of completion of the following activities.

Appendix	Condition No.	Facility or Activity	Due Date
A and B	G.12 (App. A) and 1.A (App. B)	Funding of a minimum of $1.475 million for upper basin habitat enhancement measures	Within 5 years of license issuance
A	L	Request and file National Pollutant Discharge Elimination System permit applications with Oregon DEQ.	Within 30 days of license issuance
A and B	T (App. A) and 13 (App. B)	Oregon DEQ and Tribal oversight fees for § 401 certification	By July 1 of years 1 through 10 (App. A and B) and by July 1 of each year thereafter for the term of license (App. B)
B	5	Survey of users of the project reservoirs	Within 30 days of a finding of nuisance phytoplankton growth

(c) Requirement to File Amendment Applications

Certain conditions in Appendices A, B, C, and D contemplate unspecified, long-term changes to project operations or facilities for the purpose of mitigating environmental effects. These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license. The conditions are listed below.

Appendix	Condition	Modification
A	C.4, E.4, F.4, H.2, and N	Additional measures to reduce the project's contribution to exceedances of state water quality

		criteria
A	G.9	Modifications of fish passage facilities
A	G.11	Additional mitigation measures to improve fish habitat quality or quantity
B	1.D.5	Additional mitigation measures to improve fish habitat
B	1.F	Additional or modified fish passage measures
B	3, 4, and 10	Additional measures to protect water quality and beneficial uses
C and D	7(a)	Modification of deep exclusion screen to meet smolt criteria
C and D	7(d)	Measures to reduce impingement on the deep exclusion screen
C and D	9(c) and 11(c)	Measures or modifications to meet smolt survival standards

(d) Agency Coordination

In conjunction with the Fish Passage Plan required by Ordering Paragraphs (H) and (I), the licensees shall include agency coordination provisions specified by Proposed Article 40 of the Settlement Agreement filed on July 30, 2004.

Article 402. ***Implementation Committees.***

(a) The licensees shall establish a Fish Committee as provided in the Settlement Agreement filed on July 30, 2004. The Fish Committee shall consist of the licensees; and to the extent of their interests in participating, the National Marine Fisheries Service (NOAA Fisheries); U.S. Fish and Wildlife Service (USFWS); U.S. Forest Service (USFS); Bureau of Indian Affairs (BIA); Bureau of Land Management (BLM); Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR); Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB); Oregon Department of Fish and Wildlife (ODFW); Oregon Department of Environmental Quality (ODEQ), and a representative of the following non-governmental organizations: Trout Unlimited, American Rivers, Oregon Trout, and

the Native Fish Society. The licensees' development and implementation of study plans, reports, facility designs, and operating and implementation plans submitted to the Fish Committee pursuant to the terms of this license shall comply with the requirements of the Settlement Agreement, to the extent such requirements are approved by this license. The licensees' implementation of measures pursuant to this license shall be reported to the Fish Committee as provided in the Settlement Agreement and any applicable implementation plan. Copies of all filings with the Commission following consultation with the Fish Committee shall be provided to each member of the Fish Committee.

(1) Unless a different time period is specifically established pursuant to another provision of this license, the licensees shall, where consultation with the Fish Committee is required, allow a minimum of 30 days for the Fish Committee members to comment, work to achieve consensus, and to make recommendations before filing any study, operating or implementation plan, report, or facility design with the Commission. If after consideration by the Fish Committee of all comments or recommendations, consensus is not achieved regarding the study, operating or implementation plan, report, or facility design, and any member of the Fish Committee invokes dispute resolution pursuant to section 7.5 of the Settlement Agreement, the licensees shall not file any study, operating or implementation plan, report, or facility design with the Commission until the dispute resolution process has been completed, unless otherwise directed by the Commission. The licensees shall notify the Commission of the dispute prior to the commencement of the dispute resolution process. The licensees shall include with the study, operating or implementation plan, report, or facility design: documentation of consultation with the Fish Committee, copies of committee member comments and recommendations on the study, operating or implementation plan, report, or facility design after it has been prepared and provided to the Fish Committee, and specific descriptions of how the comments are accommodated by the study, operating or implementation plan, report, or facility design.

(2) NOAA Fisheries, USFWS, ODFW, and CTWS BNR are collectively referred to as the Fish Agencies. Each Fish Agency has separate and distinct statutory authorities and no agency is deemed, by virtue of concurrent approvals, to be sharing its statutory authority with any other agency or to be conceding that the approval of any other agency is required for exercise of that agency's authority. Where consultation with the Fish Committee and approval by the appropriate Fish Agencies pursuant to their respective statutory authorities is required, the licensees shall allow the Fish Agencies a minimum of 30 days to provide such approval prior to submitting the final study, operating or implementation plan, report, or facility design with the Commission. If a Fish Agency disapproves a study, operating or implementation plan, report, or facility design, the licensees shall not file the disapproved study, operating or implementation plan, report, or design with the Commission until the dispute resolution process specified in section 7.5 of the Settlement Agreement has been completed, unless otherwise directed by the Commission or the matter in dispute was addressed pursuant to section 4.3.2 of the

Settlement Agreement, in which case no further dispute resolution shall be required before such study, operating or implementation plan, report, or design is filed with the Commission.

(b) The licensees shall establish a Terrestrial Resources Working Group as provided in the Settlement Agreement. The Terrestrial Resources Working Group shall consist of the licensees; and to the extent of their interest in participating, USFWS; USFS; BIA; BLM; CTWS BNR; and ODFW. The licensees' development and implementation of study plans, reports, facility designs, and operating and implementation plans submitted to the Terrestrial Resources Working Group pursuant to the terms of this license shall comply with the requirements of the Settlement Agreement and the applicable License Implementation Plan, to the extent such requirements are approved by this license. Unless a different time period is specifically established pursuant to another provision of this License, the licensees shall, where consultation with the Terrestrial Resources Working Group is required, allow a minimum of 30 days for the Terrestrial Resources Working Group members to comment, work to achieve consensus, and to make recommendations before filing any study, operating or implementation plan, report, or facility design with the Commission. If after consideration by the Terrestrial Resources Working Group of all comments or recommendations, consensus is not achieved regarding the study, operating or implementation plan, report, or facility design, and any member of the Terrestrial Resources Working Group invokes dispute resolution pursuant to section 7.5 of the Settlement Agreement, the licensees shall not file any study, operating or implementation plan, report, or facility design with the Commission until the dispute resolution process has been completed, unless otherwise directed by the Commission. The licensees shall include with the study, operating or implementation plan, report, or facility design: documentation of consultation with the working group, copies of comments and recommendations by working group members, and specific descriptions of how the comments and recommendations are accommodated by the study, operating or implementation plan, report, or facility design.

(c) The licensees shall establish a Recreation Resources Working Group as provided in the Settlement Agreement. The Recreation Resources Working Group shall consist of the licensees; and to the extent of their interest in participating, USFS; BIA; BLM; CTWS BNR; ODFW; and Oregon Parks and Recreation Department (OPRD). The licensees' development and implementation of study plans, reports, facility designs, and operating and implementation plans submitted to the Recreation Resources Working Group pursuant to the terms of this license shall comply with the requirements of the Settlement Agreement and the applicable License Implementation Plan, to the extent such requirements are approved by this license. Unless a different time period is specifically established pursuant to another provision of this License, the licensees shall, where consultation with the Recreation Resources Working Group is required, allow a minimum of 30 days for the Recreation Resources Working Group members to comment, work to achieve consensus, and to make recommendations before filing any study, operating or

implementation plan, report, or facility design with the Commission. If after consideration by the Recreation Resources Working Group of all comments or recommendations, consensus is not achieved regarding the study, operating or implementation plan, report, or facility design, and any member of the Recreation Resources Working Group invokes dispute resolution pursuant to section 7.5 of the Settlement Agreement, the licensees shall not file any study, operating or implementation plan, report, or facility design with the Commission until the dispute resolution process has been completed, unless otherwise directed by the Commission. The licensees shall include with the study, operating or implementation plan, report, or facility design: documentation of consultation with the working group, copies of comments and recommendations by working group members, and specific descriptions of how the comments and recommendations are accommodated by the study, operating or implementation plan, report, or facility design.

(d) The licensees shall establish a Shoreline Management Working Group as provided in the Settlement Agreement. The Shoreline Management Working Group shall consist of the licensees, and to the extent of their interest in participating, USFS; BIA; BLM; CTWS BNR; ODFW; OPRD; and Jefferson County. Licensees' development and implementation of study plans, reports, facility designs, and operating and implementation plans submitted to the Shoreline Management Working Group pursuant to the terms of this license shall comply with the requirements of the Settlement Agreement and the applicable License Implementation Plan, to the extent such requirements are approved by the license. Unless a different time period is specifically established pursuant to another provision of this license, the licensees shall, where consultation with the Shoreline Management Working Group is required, allow a minimum of 30 days for the Shoreline Management Working Group members to comment, work to achieve consensus, and to make recommendations before filing any study, operating or implementation plan, report, or facility design with the Commission. If after consideration by the Shoreline Management Working Group of all comments or recommendations, consensus is not achieved regarding the study, operating or implementation plan, report, or facility design, and any member of the Shoreline Management Working Group invokes dispute resolution pursuant to section 7.5 of the Settlement Agreement, the licensees shall not file any study, operating or implementation plan, report, or facility design with the Commission until the dispute resolution process has been completed, unless otherwise directed by the Commission. The licensees shall include with the study, operating or implementation plan, report, or facility design: documentation of consultation with the working group, copies of comments and recommendations of working group members on the completed study, operating or implementation plan, report, or facility design after it has been prepared and provided to the working group, and specific descriptions of how the comments of the Shoreline Management Working Group members are accommodated by the study, operating or implementation plan, report, or facility design.

(e) The licensees shall establish the Pelton Round Butte Fund Governing Board as provided in the Pelton Round Butte Fund Implementation Plan, Exhibit H to the Settlement Agreement, to the extent of the interest of the members in participating. As such, the Pelton Round Butte Fund Governing Board shall be comprised of eleven signatories of the Settlement Agreement, including one representative or designee from the following agencies or organizations: Licensees (one representative collectively); CTWS BNR; CTWS WCB; USFWS; NOAA Fisheries; BIA; USFWS/BLM (one representative collectively); ODFW; ODEQ; OWRD; and non-governmental organizations (American Rivers, Oregon Trout, Trout Unlimited, Native Fish Society, WaterWatch of Oregon (one representative collectively)). If during the term of the license any party specified by this article decides it does not wish to participate or continue participating on the Governing Board, the Governing Board shall consist of those remaining signatory representatives or designees that wish to continue participating, and the licensees shall provide written notification to the Commission identifying the party that has decided it no longer wishes to have a representative or designee on the Governing Board and their reasons, if known.

Article 403. ***Project Inspections.*** The licensees shall allow parties to the Settlement Agreement filed on July 30, 2004, access to, through, and across Pelton Round Butte Hydroelectric Project lands and works for the purpose of inspecting facilities and records, including monitoring data, to monitor compliance with the license. The licensees shall allow such inspections only after the entity requesting the inspection provides the licensees reasonable notice of such inspections and agrees to follow the licensees' standard safety and security procedures when engaged in such inspections.

Article 404. ***Enforcement Plan.*** Within one year of license issuance, the licensees shall file for Commission approval, an Enforcement Plan which shall include how the licensees will ensure enforcement with relevant provisions of the Terrestrial Resources Management Plan required by Article 422, including, but not limited to, seasonal and permanent road closures, all-terrain vehicle use, eagle nest sites and winter range area protection, dispersed camping, shooting ordinances, wildlife harassment, and coordination with Oregon State Police and Coordinated Enforcement Programs. Enforcement may be accomplished through an agreement with Jefferson County. The plan shall include an implementation schedule.

The licensees shall prepare the plan after consultation with Jefferson County. The licensees shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the county, and specific descriptions of how the county's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the county to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 405. ***Emergency or Special Conditions.***

(a) If at any time, unanticipated circumstances or emergency situations arise in which Endangered Species Act (ESA) listed fish or wildlife are being killed, harmed or endangered by any of the project facilities or as a result of project operation, the licensees shall immediately take appropriate action to prevent further loss in a manner that does not pose a risk to human life, limb, or property. The licensees shall, within 6 hours, notify the nearest office of the Oregon Department of Fish and Wildlife (ODFW), National Marine Fisheries Service (NOAA Fisheries), U.S. Fish and Wildlife Service (USFWS), Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR), Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB), Oregon Department of Environmental Quality (ODEQ), and Oregon Water Resources Department (OWRD), as appropriate, and comply with any restorative measures required by the resource agencies to the extent such measures do not conflict with the conditions of this license. The licensees shall notify the Commission as soon as possible but no later than 10 days after each occurrence and inform the Commission as to the nature of the occurrence and restorative measures taken.

(b) If at any time, unanticipated circumstances or emergency situations arise in which non-ESA listed fish or wildlife are being killed, harmed or endangered by any of the project facilities or as a result of project operation, the licensees shall immediately take appropriate action to prevent further loss in a manner that does not pose a risk to human life, limb, or property. The licensees shall, within 48 hours, notify the nearest office of the ODFW, NOAA Fisheries, USFWS, CTWS BNR, CTWS WCB, ODEQ, and OWRD, as appropriate, and comply with any restorative measures required by the resource agencies to the extent such measures do not conflict with the conditions of this license. The licensees shall notify the Commission as soon as possible but no later than 10 days after each occurrence and inform the Commission as to the nature of the occurrence and restorative measures taken.

Article 406. ***Activities on Forest Service or Bureau of Land Management Lands.***

(a) Additional lands of the US Forest Service (USFS) or Bureau of Land Management (BLM) that are authorized for use by the licensees in a license amendment shall be subject to laws, rules, and regulations applicable to the USFS or BLM, as appropriate. Within six months of such a license amendment, the licensees shall obtain a special use

authorization from the USFS or BLM, as applicable, for occupancy and use of any lands added to the project boundary by the license amendment and file it with the Commission. The special use authorization also shall be subject to applicable enforcement procedures of the Commission at the request of the USFS or BLM.

(b) The licensees shall not make changes in the location of any constructed Project features or facilities located on National Forest System (NFS) or BLM lands, or make any departure from the requirements of any approved exhibits authorizing use or occupancy of NFS or BLM lands filed with the Commission and authorized by the new license as issued and amended before receiving comments from the USFS or BLM and approval from the Commission. Following receipt of such comments from the agency, and at least 60 days prior to initiating any such changes or departure, the licensees shall file a report with the Commission and with USFS or BLM as appropriate, describing the changes, the reasons for the changes, and showing the comments of the agency for such changes.

(c) After consultation with the USFS or BLM and before starting any activity on NFS or BLM land that USFS or BLM, as appropriate, determines may affect another federally authorized activity on those lands, the licensees shall participate with USFS or BLM in attempting to resolve any potential conflicts with representatives of those permitted uses.

(d) The licensees shall prepare site-specific plans for comment by USFS or BLM and Commission approval for habitat-disturbing and ground-disturbing activities on NFS or BLM lands required by the license, including activities contained within resource management plans required by the license that shall be prepared subsequent to license issuance. The licensees shall prepare such site-specific plans as defined in this license. The licensees shall include in such site-specific plans the following:

(1) a map depicting the location of the proposed activity;

(2) a description of the land management area designation for the location of the proposed activity and applicable standards and guidelines;

(3) a description of alternative locations, designs, mitigation measures considered, and implementation and effectiveness monitoring designed to meet applicable standards and guidelines; and

(4) data collected from surveys, biological evaluations or consultation as required by regulations applicable to ground or habitat disturbing activities on National Forest System or BLM lands in existence at the time the plan is prepared and

(i) When surveys indicate the activity may affect a species proposed for listing or listed under the federal Endangered Species Act, or that may affect that species' critical habitat, the licensees shall prepare a Biological Assessment evaluating the potential impact of the action on the species or its critical habitat and submit it to the USFS or BLM, as appropriate, for review prior to submission to the Commission.

(ii) When surveys indicate the activity may affect a USFS Regional Forester sensitive species, or a BLM Special Status species, or their habitat, the licensees shall prepare a Biological Evaluation evaluating the potential impact of the action on the species or its habitat and submit it to the USFS or BLM, as appropriate, for approval. In consultation with the Commission, the USFS or BLM may require mitigation measures for the protection of the sensitive species; however, measures which constitute long-term changes to project operations and facilities may not be implemented without prior Commission authorization granted after the filing of an application to amend the license.

Article 407. ***Escalation of Costs.*** Unless otherwise indicated, all costs or payment amounts specified in dollars in the license shall be deemed to be stated as of the year 2004, and the licensees shall escalate such sums as of January 1 of each following year (starting in January 2005) according to the following formula:

AD = D x (NGDP)/(IGDP)

Where:

AD	=	Adjusted dollar amount as of January 1 of the year in which the adjustment is made.
D	=	Dollar amount prior to adjustment.
IGDP	=	"GDP-IPD" for the third quarter of the year before the previous adjustment date (or, in the case of the first adjustment, the third quarter of the year before the Effective Date).
NGDP	=	"GDP-IPD" for the third quarter of the year before the adjustment date.

"GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication *Survey of Current Business*, Table 7.1 (being on the basis of the year 2000 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted upon approval by the Commission. If the base year for "GDP-IPD" is changed or if publication of the index is discontinued, the licensees shall

notify the Commission as soon as possible and recommend, after consultation with the Settlement Agreement parties, adjustments or an alternative index that achieves the same economic effect.

Article 408. ***Tribal Integrated Resources Management***. Within 90 days of license issuance, the licensees shall file a written explanation of those portions of the Confederated Tribes of the Warm Springs Reservation of Oregon's "Integrated Resources Management Plan" that apply to the project.

The Commission reserves the right, upon review of the licensees' filing, to require the licensees to comply with applicable portions of the plan.

Article 409. ***Stage Change Limits.***

(a) The licensees shall operate the project with the following limits for stage changes below the Reregulating development: 0.1 foot/hour and 0.4 foot/day from October 16 to May 14, and 0.05 foot/hour and 0.2 foot/day from May 15 to October 15, except during certain extraordinary conditions, including: (1) flood events; (2) any event that triggers the Project Emergency Action Plan; (3) rapid changes in project inflows, when the rate of inflow change exceeds the proposed stage change limits; and (4) equipment failures or emergencies at the project facilities. During such extraordinary conditions, the licensees may deviate from these stage change limits. If the stage change limits are so modified, the licensees shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

(b) To monitor compliance with this requirement, the licensees shall record the time and control signal value for all stage change instructions at the Reregulating development and shall report any stage change control signals that are greater than the stage change limitations identified above to the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality (collectively, "agencies"); the Confederated Tribes of the Warm Springs Reservation (CTWS) Water Control Board (WCB); CTWS Branch of Natural Resources (BNR); and the Commission. In addition, the licensees shall provide written documentation to the agencies, CTWS WCB, CTWS BNR, and the Commission of all measured stage changes at the U.S. Geological Survey Madras gage that deviate more than 0.15 ft from the control set-point value.

Article 410. ***Measurement of Flows at the U.S. Geological Survey Madras Gage.***

For determining compliance with the minimum flow requirements in the license, the licensees shall implement a protocol for measuring flows at the U.S. Geological Survey (USGS) gage at Madras, Oregon (gage no. 14092500), that includes the following elements:

(a) ***Measured Madras Flow:*** The real-time flow release at the USGS Madras gage shall be the most recent 15-minute interval USGS gage reading, converted to flow using the USGS level vs. flow rating table. The real time flow setpoint for the USGS Madras gage shall be the most recent 15-minute interval water level setpoint in the Reregulating development control system, converted to flow using the USGS level versus flow rating table. The daily outflow of the project is defined as the average flow measured at the USGS Madras gage each calendar day. This daily outflow shall be calculated from the average of the day's 96 quarter-hour (15-minute interval) flow release readings.

(b) ***Determination of Allowed Minimum Flow:*** The daily allowed minimum flow shall be determined each day by the licensees, based on the provisions of the Project Operating Plan, Exhibit C to the Settlement Agreement, including monthly minimum flows, refill allowances, the plus or minus (±) 10-percent rule, measured inflows and other constraints. The allowed minimum flow shall be the calculated flow in cubic feet per second (cfs) adjusted up or down to match the nearest 0.01-foot measurement increment of the USGS level vs. flow rating table. The allowed minimum flow shall be calculated and recorded by the licensees before 6 a.m. of each day. Adjustment of the flow setpoint for each day shall be completed by 9 a.m. of each day.

(c) ***License Compliance for Minimum Flows:*** The project shall be deemed to be in compliance with the minimum flow requirements whenever the flow setpoint equals or exceeds the allowed minimum flow. In order to accommodate flow measurement inaccuracies, control-system variations, and the inability of the turbine and spillway gates to exactly produce the flow setpoint, non-compliance with this minimum flow requirement is deemed to be any event where the 15-minute measured flow release falls more than 0.10 foot (approximately 260 cfs) below the allowed minimum flow for more than 30 minutes.

Article 411. ***Measurement of Project Inflows.*** The licensees shall improve the accuracy of project inflow monitoring through a combination of upstream U.S. Geological Survey (USGS) gage improvements and the installation of additional lake level monitoring stations in Lake Billy Chinook. Estimates of inflow shall be made using a combination of the "Storage Change" and "Average Ungaged" estimating methods as defined in the Project Operating Plan, Exhibit C to the Settlement Agreement.

(a) *System Modifications and Improvements:* Within six months of license issuance, the licensees shall file a plan for Commission approval to: (1) fund work by the USGS as needed at the three upstream tributary gages (Crooked River – gage no. 14087400, Deschutes River – gage no. 14076500, and Metolius River – gage no. 14091500) to allow real-time telemetry of hourly inflow data from these gages to the licensees' project control facility; and (2) install two or more new lake level monitoring stations in Lake Billy Chinook at locations selected to reduce level measurement errors. The plan shall include an implementation schedule and provisions to install data acquisition equipment, recording hardware and software as needed to calculate inflows on a timely basis and to document the inflow record.

The licensees shall prepare the plan after consultation with the USGS and the Fish Committee established by Article 402. The licensees shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the USGS and Fish Committee, and specific descriptions of how the USGS' and Fish Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the USGS and Fish Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(b) ***Inflow Estimating Method*****:** The licensees shall estimate total project inflow every 6 hours using the "Storage Change" method. This method shall calculate inflow from measured water levels in the three project reservoirs, reservoir storage versus elevation tables, and the USGS Madras gage hourly flow record. The Lake Billy Chinook water level used in this calculation shall be the average of the level monitors in Lake Billy Chinook. The Lake Simtustus and Reregulating Reservoir water levels shall be the level recorded by the existing lake level monitors in these two impoundments.

The inflow from the three upstream USGS gages on the Crooked, Deschutes, and Metolius Rivers shall be summed every 6 hours, and this sum shall then be subtracted from the 6-hour total inflow estimate to provide an estimate of the ungaged inflow to Lake Billy Chinook. The single 6-hour estimate of ungaged inflow shall be combined with prior 6-hour estimates of the ungaged inflow (using a rolling average) to estimate the "Average Ungaged" project inflow. The net estimated hourly inflow to the project shall then be calculated by the sum of the average ungaged inflow and the hourly flows measured at the three upstream USGS gages. In the event the upstream USGS gages or communication systems fail, the licensees shall use the 6-hour total project inflow

calculation to substitute for the hourly inflow estimate, until the real-time gage monitoring can be restored. The estimated daily inflow shall be the average of the day's 24 estimated hourly inflow values.

(c) ***Schedule*:** The inflow monitoring system, including all system modifications and improvements shall be installed and operational within two years of license issuance, unless otherwise directed by the Commission.

(d) ***Modifications of Inflow Estimating Method*:** At any time, the licensees may propose modifications regarding the inflow estimating method to improve the accuracy of the system, or to simplify the system if such simplification will not result in less accuracy. If the licensees would like to modify the estimating method or simplify the system, the licensees shall develop a plan in consultation with the Fish Committee for such modifications for Commission approval. The licensees shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee, and specific descriptions of how the Fish Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 412. ***Required Minimum Flows Below the Reregulating Development.***

(a) The licensees shall operate the project to provide flow releases below the Reregulating development that equal or exceed the following minimum flows:

(1) *Target Flows:* The following table shows the target flows below the Reregulating development for each calendar month. The allowed minimum flow shall equal the target flow when project inflows exceed the target flows and the "Refill Allowance" provision is not in effect. When the "Or Inflow" or "Refill Allowance" provisions are in effect, the allowed minimum flow shall be determined pursuant to subsections (2) and (3) below.

Target flow in cubic feet per second, measured at the USGS Madras Gage No. 14092500.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Target Flow	4,500	4,500	4,571	4,170	4,000	4,000	4,000	3,500	3,800	3,800	4,049	4,500

(2) ***"Or Inflow" Provision:*** In order to prevent drawdown of Lake Billy Chinook, the allowed minimum flow shall be reduced below the target flow when project inflows are less than the target flow. The allowed minimum flow shall be reduced in this case, according to the following protocol: when the lowest daily inflow during the previous 7 days is below the target flow, the allowed minimum flow shall be equal to the lowest daily inflow recorded over the past 7 days. The allowed minimum flow shall be calculated each day when the "Or Inflow" provision is in effect and the allowed minimum flow shall be changed daily, as defined by the inflow estimate.

(3) ***"Refill Allowance" Provision*****:** The project shall be allowed a "refill allowance" between November 15 and June 15 (the reservoir refill season) to store water in Lake Billy Chinook to ensure that Lake Billy Chinook is filled to its summer operating level (minimum elevation 1,944.0 feet above mean sea level) by May 15. The "refill allowance" shall be 150 cubic feet per second (cfs) less than the lowest daily inflow recorded over the past 7 days, except under the following conditions: (i) from November through February, if daily inflows are less than 3,150 cfs and greater than 3,000 cfs, the refill allowance shall be the difference between the daily inflow and 3,000 cfs; however, in instances where the daily inflows are 3,000 cfs or less, the refill allowance shall be 0; and (ii) from March through June, if daily inflows are less than 3,650 cfs and greater than 3,500 cfs, the refill allowance shall be the difference between the daily inflow and 3,500 cfs; however, in instances where the daily inflows are 3,500 cfs or less, the refill allowance shall be 0.

(4) ***Extension of Refill Allowance Provision:*** If the refill allowance is less than 150 cfs during the reservoir refill season, the Refill Allowance Provision shall be extended from May 15 to June 15. During this additional month the refill allowance shall be determined based on the provisions in (a)(3) above. If the refill allowance is extended, the licensees shall notify the Commission by May 15 of the year in which the extension is made.

(b) ***Fall Flow Augmentation in Lower River for Fall Chinook:*** If project inflows fall below 3,000 cfs between September 16 and November 15, the licensees shall release up to 200 cfs from storage in Lake Billy Chinook to maintain a daily release of 3,000 cfs. This augmentation flow is limited to a drawdown of 4 feet measured from the average Lake Billy Chinook water surface elevation recorded on September 15. The licensees shall consult with the Fish Committee established by Article 402 regarding the amount of available water, rate of water release, and timing and duration of augmentation flows.

(c) ***Run of River Operation for Lower River Flows (+/- 10-percent Rule):*** The licensees shall hold river flows below the Reregulating development to within plus or minus (±) 10 percent of the measured project inflow, except under the following conditions: (1) days with measured inflow in excess of 6,000 cfs; (2) any event that triggers the Project Emergency Action Plan; (3) power emergencies, as defined in the

Western States Coordinating Council Minimum Operating Reliability Criteria (March 8, 1999), as such criteria may be amended during the license term; (4) equipment failures or emergencies at one of the project dams or power plants; or (5) reservoir drawdowns are needed for safe passage of anticipated flood flows to minimize damage to life and property.

If the Operating Reliability Criteria referenced above are amended during the license term, the licensee shall file the amended criteria with the Commission within 30 days of the licensees becoming aware of the amendment.

(d) ***Fish Emergency Clause:*** In years in which project inflow is expected to be below 3,000 cfs or flow may result in in-river conditions that the Fish Committee believes to be unacceptably poor, the licensees shall consult with the Fish Committee to determine if a deviation from the "Or Inflow" provisions above or a deviation from the flow blending scheme required by the water quality certificates issued by the Oregon Department of Environmental Quality (ODEQ) and the Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB) would be likely to help avoid serious harm to native species. If the Fish Committee members agree, after consultation with ODEQ and the CTWS WCB, that a deviation is likely to help avoid such harm, and to be consistent with upstream and downstream beneficial uses, the licensees shall file for Commission approval a plan, prepared after consultation with the Fish Committee, to implement the deviation deemed necessary by the Fish Committee. The licensees shall include with the plan an implementation schedule, documentation of consultation, copies of Fish Committee comments and recommendations on the plan, and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee to comment and make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 413. ***Long-Term Flow Conditions.*** Within one year of license issuance, the licensees shall file for Commission approval a plan to track indicators of predicted long-term low flow (LTLF) conditions in the lower Deschutes River throughout the license term. The plan shall provide that: (1) an LTLF trigger or multiple LTLF triggers will be established, using the indicators, that signal predicted onset or realized onset of LTLF conditions in the river that are lower than historically observed at the U.S. Geological Service Madras gage; (2) certain remedial actions will be initiated if an LTLF trigger is reached; (3) these LTLF triggers will not be developed or implemented to

address low flows of a non-long-term nature that may otherwise be addressed by the Fish Emergency Clause in Article 412 subsection (d) above; and (4) the LTLF trigger(s) will be reviewed and, if necessary, modified after Commission approval, at least every ten years considering new information and changes in predictive capabilities. The licensees shall develop the plan after consultation with the Fish Committee established by Article 402. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of Fish Committee comments and recommendations on the plan, and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee to comment and make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

If the LTLF trigger is reached, the licensees shall consult with the Fish Committee, Oregon Department of Environmental Quality (Oregon DEQ), and the Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB) to identify any negative effects to aquatic resources and federal wild & scenic river outstandingly remarkable values (ORV's) resulting from the lower river flows, to identify potential mitigation measures in the lower Deschutes River basin, and to determine if changes in project operations should be implemented to ameliorate such effects. The licensees shall also consult with the Oregon Parks and Recreation Department (OPRD) and, as appropriate, the Terrestrial, Recreation, and Shoreline Management Working Groups established by Article 402 regarding potential impacts to ORV's, scenic waterway values, lake recreation, cultural/archaeological resources, shoreline erosion and riparian habitat that may result from potential changes in project operations.

If changes in project operations are identified to mitigate any negative effects to aquatic resources and ORV's, the licensees shall, in consultation with the Fish Committee, Oregon DEQ, and CTWS WCB, prepare and file with the Commission a plan to implement such changes. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of consulted entities' comments and recommendations on the plan, and specific descriptions of how the consulted entities' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the consulted entities to comment and make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 414. ***Seasonal Drawdowns.***

(a) *Drawdown and Fluctuation Limits*: The licensees shall begin the seasonal drawdown of Lake Billy Chinook in the fall of each year followed by refill during the late fall, winter, and spring. The reservoir shall be refilled as follows:

(1) by May 1 when inflows exceed the target flows specified by Article 412;

(2) by May 15 when inflows are below the target flows; and

(3) by June 15 in years when the refill allowance is less than 150 cubic feet per second (cfs) as provided in Article 412, subsection (a)(3).

Drawdown and fluctuation limits for Lake Billy Chinook, Lake Simtustus, and the Reregulating Reservoir shall be as shown in the following table.

Seasonal drawdown and fluctuation limits for project reservoirs.		
	Operating Water Surface Elevation (feet)	
Reservoir	Minimum Summer	Winter
Lake Billy Chinook	1,944 (May 15* to Sept 15)	1,925 (Sept 16 to May 14)
Lake Simtustus	1,576 (June 1 to Aug 31)	1,573 (Sept 1 to May 31)
Reregulating Reservoir	1,414 (year round)	1,414 (year round)

*As provided in Article 412, in years when the refill allowance is less than 150 cfs, the refill date is June 15.

(b) During certain extraordinary situations, the licensees may exceed the normal seasonal drawdown limits for the project reservoirs. Such extraordinary situations include: (1) drawdown needed for safe passage of anticipated flood flows to minimize damage to life and property; (2) drawdown required to complete repairs on project facilities (including spillway gates, the intake structures, or other dam structures); and (3) power emergencies, as defined in the Western States Coordinating Council Minimum Operating Reliability Criteria (March 8, 1999), as such criteria may be amended during the license term. If the normal seasonal drawdown limits are exceeded, the licensees shall notify the Commission as soon as possible, but no later than 10 days after each such incident. If the Operating Reliability Criteria specified in item (3) are amended during the license term, the licensees shall file the amended criteria with the Commission within 30 days of the licensees' becoming aware of the amendment.

Article 415. ***Operations Compliance Plan.*** Within six months of license issuance, the licensees shall file with the Commission, for approval, an Operations Compliance Plan that describes how the licensees will comply with the operational requirements of this license. The plan shall include, but not be limited to:

(a) a provision to monitor compliance with the stage change limit requirements specified in Article 409, gaging requirements specified in Article 410, inflow estimation requirements specified by Article 411; minimum flow and reservoir refill requirements specified in Article 412, implementation of long-term flow triggers specified in Article 413, and lake level requirements specified in Article 414.

(b) a description of the exact location of all gages and/or measuring devices that would be used to monitor compliance, the method of calibration for each gage and/or measuring device, the frequency of recording for each gage and/or measuring device, and a monitoring schedule;

(c) provisions to notify the National Marine Fisheries Service (NOAA Fisheries), U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Indian Affairs (BIA), U.S. Bureau of Land Management (BLM), Oregon Department of Fish and Wildlife (Oregon DFW), Oregon Department of Environmental Quality (Oregon DEQ), Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB), Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR) and the Commission no later than 48 hours after the licensees become aware of any deviation from the requirements specified in part (a);

(d) a provision to maintain a log of project operation;

(e) provisions for issuance of an Annual Project Operations Report and incident reports documenting any events where the operation of the project deviated from the operational requirements of this license. The Annual Project Operations Report shall include hourly and daily inflow records for the reporting period. Incident reports shall include hourly and daily inflow records as appropriate to document compliance with the relevant project operating constraints. Copies of all reports shall be filed with the Commission and submitted to the Coordinating Committee established pursuant to the Settlement Agreement at the times specified in Exhibit C of the Settlement Agreement;

(f) a provision for an annual project review meeting with the Coordinating Committee defined in section 4.2 of the Settlement Agreement; and

(g) identification of a staff member of the licensees to serve as an operations compliance monitor with the responsibility for coordinating and ensuring the implementation of the Operations Compliance Plan and serving as a point of contact for compliance inquiry purposes, including a provision for notifying the Commission and the consulted agencies within 30 days if and when the compliance monitor designee changes.

The licensees shall prepare the plan after consultation with the Fish Committee established by Article 402, and the U.S. Geological Survey (USGS). The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and USGS, and specific descriptions of how the comments of Fish Committee members and USGS are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee members and the USGS to comment and to make recommendations before filing the plan with the Commission. If after consideration by the Fish Committee and USGS of all comments or recommendations, consensus is not achieved regarding the plan, and any member of the Fish Committee invokes dispute resolution pursuant to section 7.5 of the Settlement Agreement, the licensees shall not file the plan with the Commission until the dispute resolution process has been completed unless otherwise directed by the Commission. The licensees shall include with the plan, an implementation schedule, documentation of consultation with the Fish Committee and USGS, copies of committee member comments and recommendations on the plan after it has been prepared and provided to the Fish Committee and USGS, and specific descriptions of how the comments are accommodated by the plan.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 416. ***Water Quality Monitoring.*** The licensees shall conduct water quality monitoring pursuant to the Water Quality Management and Monitoring Plan (WQMMP) approved by the Oregon Department of Environmental Quality (Oregon DEQ) and the Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS WCB) as part of the water quality certifications issued by those agencies and attached to this license as Appendices A and B, respectively. Any subsequent amendments to the WQMMP approved by ODEQ and CTWS WCB shall also be approved by the Commission prior to implementation. Copies of the annual reports submitted to ODEQ and CTWS WCB shall be filed with the Fish Committee established by Article 402 and the Commission within 30 days of their filing with Oregon DEQ and CTWS WCB.

Article 417. ***Infeasibility of Temporary Downstream Facilities.*** In the event that all steps identified in the Fish Passage Plan (Condition 1 of Appendices C and D) to improve collection efficiency of the temporary downstream facilities and reservoir passage or survival have been implemented, and the criteria and goals for downstream passage stated in Condition 2 of Appendices C and D have not been achieved, the licensees shall implement the following processes:

(a) ***Notification.*** The licensees shall timely notify the Commission and the Fish Committee established by Article 402 that the temporary downstream passage facilities have not achieved the standards set out in the criteria and goals for downstream passage stated in Condition 2 of Appendices C and D and that all steps identified in the Fish Passage Plan designed to improve collection efficiency and reservoir passage or survival have been taken as prescribed in the Fish Passage Plan.

(b) ***Meeting.*** The licensees shall notice a meeting of the Fish Committee within 60 days of the notice in (a) to the Commission.

(c) ***Information and Analyses from Testing and Verification Studies.*** Not less than 45 days before the meeting, the licensees shall provide the Fish Committee and file with the Commission a report, including analysis of the information gathered during the operation of the temporary downstream passage facilities pursuant to the Testing and Verification provisions of the Fish Passage Plan, to inform an analysis by the Fish Committee and the Commission of whether (1) testing and/or modification of the temporary downstream passage facilities should continue, (2) an alternative fish passage methodology should be implemented, or (3) fish passage is currently scientifically and technologically infeasible.

(d) ***Plan with Passage Option***. If requested to do so by the Fish Committee or the Commission, the licensees shall develop a plan to implement the passage option selected under this paragraph according to the following procedures:

(1) ***Temporary Collection Facilities*****:** If the Fish Committee believes or the Commission finds that the information provided pursuant to paragraph (c) shows demonstrable progress related to reservoir passage and survival, the licensees shall, within 60 days following the meeting, develop a plan for the continued operation, any needed modification, and testing of the temporary downstream passage facilities. The licensees shall prepare the plan in consultation with the Fish Committee established by Article 402 and the Fish Agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and Warm Springs Reservation Branch of Natural Resources). The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's

and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(2) ***Alternative Fish Passage Plan*****:** If the Fish Committee believes or the Commission finds that the information provided pursuant to paragraph (c) supports selection of an alternative fish passage plan, including but not limited to tributary trapping, substantially new proposals based on the selective water withdrawal system, or any other scientifically supported fish passage methodology, the licensees shall, within 12 months of the meeting, develop an alternative fish passage plan. Any alternative fish passage plan shall be consistent with maintaining relevant water quality standards, including, but not limited to, continued operation of the selective water withdrawal facility, if the selective water withdrawal facility is necessary to achieve water quality standards. The licensees shall prepare the plan in consultation with the Fish Committee and the Fish Agencies. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(e) ***Feasibility*****.** The licensees shall implement any plans developed under paragraph (d) of this article according to the schedule and procedures set out in those plans as approved by the Commission. If a plan to continue operation and testing of the temporary downstream passage facilities or an alternative fish passage plan is determined to be infeasible according to the schedule and procedures set out in any plan developed under paragraph (d) of this article, then the licensees shall utilize the procedures beginning with paragraph (a) of this article to initiate further proposals.

(f) ***New Information Regarding Fish Passage.*** If new information demonstrates that downstream fish passage may be feasible, the licensees shall, within 60 days of receiving such information, notice a meeting of the Fish Committee to determine whether downstream fish passage should be reinitiated. If the Fish Committee believes or the Commission finds that downstream fish passage should be reinitiated, the licensees shall develop a fish passage plan based on the new information then available. Such a plan shall be developed in consultation with the Fish Committee and Fish Agencies. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 418. ***Infeasibility of Permanent Downstream Facilities.*** In the event that all steps identified in the Fish Passage Plan (Appendix C, Condition 1 and Appendix D, Condition 1) to improve collection efficiency of the permanent downstream facilities and reservoir passage or survival have been implemented, and the criteria and goals for downstream passage stated in Condition 2 of Appendices C and D have not been achieved, the licensees shall implement the following process:

(a) ***Notification.*** The licensees shall timely notify the Commission and the Fish Committee established by Article 402 that the permanent downstream passage facilities have not achieved the standards set out in the criteria and goals for downstream passage stated in Condition 2 of Appendices C and D and that all steps identified in the Fish Passage Plan designed to improve collection efficacy and reservoir passage or survival have been taken as prescribed in the Fish Passage Plan.

(b) ***Meeting.*** The licensees shall notice a meeting of the Fish Committee within 60 days of the notice to the Commission.

(c) ***Information and Analyses from Testing and Verification Studies.*** Not less than 45 days before the meeting, the licensees shall provide the Fish Committee and file with the Commission a report, including analysis of the information gathered during the operation of the permanent downstream passage facilities pursuant to the Testing and

Verification provisions of the Fish Passage Plan, to inform an analysis by the Fish Committee and the Commission whether (i) testing and/or modification of the permanent downstream passage facilities should continue, or (ii) fish passage is currently scientifically and technologically infeasible for some or all species.

(d) ***Plan with Passage Options*****.** If requested to do so by the Fish Committee or the Commission, the licensees shall develop a plan to implement the passage option selected under this paragraph according to the following procedures:

(1) ***Permanent Collection Facilities*****:** If the Fish Committee believes or the Commission determines that the information provided pursuant to paragraph (c) shows demonstrable progress related to reservoir passage and survival, the licensees shall, within 60 days following the meeting, develop a plan for the continued operation, any needed modification, and testing of the permanent downstream passage facilities. The licensees shall prepare the plan in consultation with the Fish Committee established by Article 402 and the Fish Agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and Warm Springs Branch of Natural Resources). The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(e) ***Feasibility*****.** The licensees shall implement any plan developed under paragraph (d)(1) of this article according to the schedule and procedures set out in that plan. If continued operation and testing of the permanent downstream passage facilities is determined to be infeasible according to the schedule and procedures set out in any plan developed under paragraph (d) of this article, then the licensees shall utilize the procedures beginning with paragraph (a) of this article to initiate further proposals.

(f) ***New Information Regarding Fish Passage*****.** If new information demonstrates that downstream fish passage may be feasible, the licensees shall, within 60 days of receiving such information, notice a meeting of the Fish Committee to determine whether downstream fish passage should be reinitiated. If the Fish Committee believes or the

Commission determines that downstream fish passage should be reinitiated, the licensees shall develop a fish passage plan based on the new information then available. Such plan shall be developed in consultation with the Fish Committee and Fish Agencies. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 419. ***Fish Health Management Program.*** Within 18 months of license issuance, the licensees shall file for Commission approval a plan for a fish health management program at the project to support the fish passage effort, and to monitor disease incidence in Deschutes River fish populations and potential changes in the distribution of fish disease agents. The plan shall include provisions for fish health services and supplies associated with production of salmon and steelhead eggs and fry at Round Butte Hatchery as part of the Reintroduction Plan, diagnosis of disease in mortalities at fish facilities, and monitoring of disease agents in wild fish populations. The plan shall also include provisions for fish pathogen procedures developed in consultation with the Oregon Department of Fish and Wildlife Fish Health Services staff (ODFW) for trap-and-haul and volitional passage programs. The licensees shall include with the plan an implementation schedule that provides for implementation of the plan throughout the Interim Passage Phase and the first five years of the Final Passage Phase (or for the first 15 years of the Interim Passage Phase if transition to the Final Passage Phase does not occur).

The program shall provide for the evaluation of disease as a mortality factor in downstream and upstream migrating anadromous salmonids, to reduce the risk of transmitting new serious disease pathogens upstream, and other fish health management activities associated with the fish passage program. This requirement may be accomplished through an agreement with ODFW.

The licensees shall prepare the plan in consultation with the Fish Committee established by Article 402 and the Fish Agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service, ODFW, and Warm Springs Branch of Natural Resources). The licensees shall include with the plan documentation of consultation,

copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies, and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee and Fish Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 420. ***Round Butte Hatchery.***

(a) ***Hatchery Agreement*:** Within six months of license issuance, the licensees shall enter into with Oregon Department of Fish and Wildlife (ODFW) and file with the Commission, for approval, the "Agreement Related To The Operation Of The Round Butte Hatchery And Related Facilities" (the "Hatchery Agreement"), substantially consistent with the draft agreement included in Appendix B to the Settlement Agreement.

(b) ***Hatchery Operations*:** Within one year of license issuance, the licensees shall file for Commission approval a plan for hatchery operations at Round Butte Hatchery at no more than current production levels of spring Chinook and summer steelhead, as specified in section 8 of Appendix B of the Settlement Agreement, during the term of the license, which hatchery operations shall be consistent with: (1) the annual work plan developed under Condition 16 of Appendices C and D; (2) then-in-existence fish management policies and directives of ODFW and the Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR); (3) any Hatchery Genetics Management Plan or other directive developed between ODFW and the National Marine Fisheries Service (NOAA Fisheries) pursuant to the Endangered Species Act (ESA); and (4) the priority objective of restoring and recovering wild stocks in the Deschutes River basin. To ensure consistency with the Fish Passage Plan, the licensees shall consult with the Fish Committee established by Article 402 regarding hatchery operations. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee, and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(c) ***Hatchery Improvements:*** Within six months of entering into the Hatchery Agreement with ODFW or one year of license issuance if agreement is not reached, the licensees shall, after consultation with the Fish Committee, file for Commission approval a hatchery improvement plan to implement the hatchery improvements identified in the Hatchery Agreement if such an agreement is reached or the draft agreement included in Appendix B to the Settlement Agreement if agreement is not reached. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee, and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(d) ***Sockeye*****:** If the Fish Committee believes that hatchery supplementation is necessary in order to reestablish an anadromous population of sockeye above Round Butte dam, the licensees shall file a plan with the Commission, for approval, to undertake the necessary changes in equipment to support hatchery capacity at the Round Butte Hatchery or provide funding to ODFW to undertake such changes for the production of sockeye. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee, and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Fish Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

If the Fish Committee determines that hatchery supplementation is not necessary in order to reestablish an anadromous population of sockeye above Round Butte dam, the licensee shall file for Commission approval written notification of and justification for the Committee's decision.

(e) ***Periodic Review:*** Every five years after issuance of the license, the licensees, in cooperation with ODFW and CTWS BNR to the extent of their interests in participating, shall conduct a periodic review, to be funded by the licensees, of the hatchery program to determine whether it is meeting its goals. The review shall consider federal, ODFW and CTWS BNR fish management policies and directives, any Hatchery Genetics Management Plan or other directive developed between ODFW and NOAA Fisheries pursuant to the ESA, relevant best practices, and existing information regarding recent scientific advances, and shall include recommendations for ongoing management of the hatchery program for the next five years. The licensees shall make the draft hatchery review available to the Fish Committee for review and comment. The licensees also shall make the draft hatchery review available for public review and comment through an annual workshop or other appropriate forum. The licensees shall provide notice of the annual workshop to all Settlement Agreement parties and the Commission. The licensees shall allow a minimum of 30 days for the consulted parties to comment prior to finalizing the hatchery review and filing it with the Commission. The licensees shall specify in the final review how any comments and recommendations were addressed.

If the licensees, ODFW, and CTWS BNR believe in the final review that the hatchery program is not supporting the goals of the Fish Passage Plan or supporting the goals of self-sustaining harvestable fisheries in the lower Deschutes River, the licensees shall consult with ODFW and CTWS BNR regarding changes that may be made to hatchery operations. If ODFW and CTWS BNR believe that changes to hatchery operations are necessary, the licensees shall file a plan with the Commission, for approval, to undertake the necessary changes or provide funding to ODFW to undertake such changes for the purposes of supporting the goals of the Fish Passage Plan or self-sustaining harvestable fisheries in the lower Deschutes River. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agency and Tribe, and specific descriptions of how the agency's and Tribes' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the agency and the Tribe to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

(f) If the agreement specified in item (a) is not reached, the licensees shall file for Commission approval written explanation of the dispute, including the positions taken, in lieu of filing the agreement. In the event agreement is not reached, the licensees shall remain responsible for completing items (b) through (f) of this article. The Commission reserves the right to require additional measures consistent with the terms of this article or modifications to this article in the event the agreement in item (a) is not reached.

Article 421. ***Native Fish Monitoring Program.*** The licensees shall, within one year of license issuance, file for Commission approval, after consultation with the Fish Committee established by Article 402, a native fish monitoring plan to evaluate effects of reintroducing anadromous fish on resident fish populations. The plan shall include the following biological and habitat components:

(a) Biological Components:

(1) Sockeye, steelhead, and spring Chinook spawning surveys, at locations and times determined by the Fish Committee, to assess spawning escapement, distribution, and timing for fish passed above the dams; redd counts in tributaries to Lake Billy Chinook, including the Metolius River system and Squaw Creek; and annual salmon and steelhead spawning surveys and redd counts beginning the first year that returning adult anadromous fish are passed upstream of the project and continuing after initiation of downstream passage for the length of time (about 12 years) required for three generations of adults to return. This salmon/steelhead spawning monitoring shall continue on an annual basis until the ratio of recruits to spawners (R/S ratio) is $\geq$1, whereupon the licensees shall notify the Commission that an R/S ratio of $\geq$1 has been reached. Thereafter, as long as the R/S ratio remains $\geq$1, the licensees are under no obligation to continue the spawning monitoring unless recommended by the Fish Committee and approved by the Commission. In the event that the R/S ratio decreases to <1, the licensees shall notify the Commission, and annual spawning monitoring shall be resumed until the R/S ratio is again $\geq$1.

(2) Monitoring of competition among anadromous and resident fish species in the Metolius and middle Deschutes River systems and McKay Creek following reintroduction of steelhead and salmon upstream of the project, using a combination of population monitoring and redd counts, including the following:

(i) Annual population surveys of the resident redband trout population in Squaw Creek and McKay Creek beginning in the first year of the license; following reintroduction of anadromous fish above the project, redband trout monitoring surveys in five of the first ten years after reintroduction.

(ii) Counts of redband trout redds annually in Squaw Creek and the Metolius River basin, at locations and times determined by the Fish Committee, beginning in the first year of the license and continuing until initiation of upstream passage of returning anadromous adults; following the initiation of upstream passage, redband trout redd counts in five of the first ten years after the initiation of upstream passage.

(iii) Determination of the proportion of redband trout and steelhead in Squaw Creek and McKay Creek at years 5 and 10 after reintroduction of steelhead.

(iv) Annual (unless bull trout are delisted under the Endangered Species Act) evaluation of the bull trout population using Oregon Department of Fish and Wildlife's (Oregon DFW's) annual bull trout redd counts on Metolius River tributaries, annual reservoir angler surveys during the targeted March–April bull trout fishery at Lake Billy Chinook, and monitoring of bull trout at project fish passage facilities.

(v) Monitoring of sockeye and bull trout spawning interactions through redd counts and observations for spawning site overlap during five of the first ten years after the initiation of upstream passage of returning anadromous adults; if interactions are found, more intensive redd surveys and spawning observations assessing the effects of sockeye redd superimposition on bull trout redds.

(b) <u>Habitat Components:</u>

(1) Monitoring of the quantity of habitat available upstream of the project by surveying approximately 20 miles of accessible stream above the project each year. Milestones for habitat availability monitoring shall be (i) before upstream passage (as baseline), (ii) immediately after initiation of upstream passage, and (iii) whenever changes in the quantity of accessible habitat occur (e.g., in the event passage is initiated at upstream non-project facilities), or as otherwise approved by the Commission.

(2) Monitoring of habitat effectiveness and riparian conditions above the project, using commonly-accepted protocols and by surveying about 20 miles of accessible stream above the project each year at locations and times determined by the Fish Committee. Habitat effectiveness shall be monitored during the term of the new license through fish habitat surveys and production capacity estimates. Use of a

geographic information system (GIS) database to incorporate the information and to develop, prioritize, and implement fish habitat mitigation projects and evaluate success for passage efforts.

(3) Production capacity estimates for spring Chinook, summer steelhead, and sockeye habitat within two years of license issuance. Annual reevaluation for the first ten years of the new license, and every five years thereafter, incorporation of the estimates of production capacity into life cycle modeling, and evaluation of passage success for the reintroduction of anadromous fish species above the project.

(4) Monitoring of the condition of habitat for any riparian habitat restoration project undertaken by the licensees. Monitoring programs shall be consistent with the strategies detailed in the Terrestrial Resources Management Plan required by Article 423, and shall include the following parameters: vegetation species composition; bank stability; herbaceous cover; tree/juniper/shrub cover; height and diameter of trees; canopy cover; growth and physical condition of vegetation; and distribution of vegetation.

The plan shall also include a provision for the licensees to file for Commission approval an annual report describing the prior year's monitoring activities and indicating the monitoring activities that will be undertaken in the then current year. The annual report shall be filed by February 1 commencing the year following the first year of monitoring and continuing until the year following the last year of monitoring activities under this article. The licensees shall allow a minimum of 30 days for the Fish Committee to comment on a draft of the annual report and to make recommendations before filing the final annual report with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 422. ***Terrestrial Resources Management Plan.***

(a) Within one year of license issuance, the licensees shall file with the Commission for approval a Terrestrial Resources Management Plan (TRMP) to implement terrestrial resource protection, mitigation, and enhancement (PME) measures as specifically set out and described in the TRMP Outline, Exhibit E to the Settlement Agreement to the extent such measures apply to lands within the project boundary. The TRMP shall clearly indicate those lands within the project boundary to which the measures apply. The TRMP shall be coordinated with the Recreation Resources Implementation Plan (Article 424), the Shoreline Management Plan (Article 428), and with existing laws and plans to ensure consistency among the plans' objectives. The TRMP shall be prepared after consultation with the Terrestrial Resources Working Group established by Article 402.

(b) The TRMP shall be the principal instrument for management of, implementation, monitoring and adaptation of PME measures for terrestrial resources affected by or related to the project. The TRMP shall include specific goals for terrestrial resources, as well as clearly defined objectives for achieving the goals. The licensees shall include in the TRMP the following resource management strategies for implementing specific PMEs:

(1) Riparian and wetland restoration and protection strategy;

(2) Vegetation management strategy;

(3) Exotic and invasive vegetation management strategy;

(4) Comprehensive bald eagle management strategy;

(5) Raptor protection strategy;

(6) Threatened, endangered, and sensitive (TES) species and habitats of special concern protection strategy;

(7) Wildlife control strategy;

(8) Travel and access management strategy;

(9) Public access strategy;

(10) Pelton Fish Ladder wildlife protection strategy; and

(11) Wildlife monitoring strategy

(c) The licensees shall, after consultation with the Terrestrial Resources Working Group, file with the Commission by June 1 of each year after Commission approval of the TRMP, an annual report documenting the implementation of the TRMP. The annual TRMP report shall:

(1) Document the implementation of PME measures as scheduled in the TRMP.

(2) Describe the coming year's proposals for implementing scheduled management actions pursuant to the TRMP.

(3) Document consultation activities related to the TRMP.

(4) Document the results of monitoring of completed actions (to the extent monitoring is required for any particular action) to ensure proper implementation and effectiveness.

(d) The licensees, as part of the TRMP, shall develop and implement an adaptive management process to monitor implementation and effectiveness of terrestrial resource PME measures, and adapt implementation measures as needed to meet resource specific goals and objectives. The licensees, in consultation with the Terrestrial Resources Working Group, shall develop adaptive management proposals, including protocols and schedules, in consultation and coordination with the Terrestrial Resources Working Group. The TRMP shall be updated every 5 years during the license term in consultation with the Terrestrial Resources Working Group as part of the adaptive management process. As appropriate, the licensees shall incorporate peer review into the adaptive management process to evaluate adaptive management actions and assess technical evaluations. The TRMP updates shall be filed with the Commission for approval. Upon Commission approval, the licensees shall implement the updated plan.

(e) The licensees shall include with the TRMP and any TRMP updates stipulated in item (d) above documentation of consultation, copies of comments and recommendations on the completed plan and plan updates after they have been prepared and provided to the Working Group, and specific descriptions of how the Working Group's comments are accommodated by the plan and plan updates. The licensees shall allow a minimum of 30 days for the Working Group to comment and to make recommendations before filing the plan and plan updates with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan and plan updates. Implementation of the plan and plan updates shall not begin until the plan and plan updates are approved by the Commission. Upon Commission approval, the licensees shall implement the plan and plan updates, including any changes required by the Commission.

Article 423. ***Terrestrial Resource Interim Measures.*** Within six months of license issuance, the licensees shall file for Commission approval a plan to implement the following measures within one year of license issuance while the Terrestrial Resources Management Plan (TRMP) is being developed as provided in Article 422 and to the extent such measures apply to lands within the project boundary:

(a) ***Upland Vegetation Management.*** The licensees shall implement upland vegetation management measures to improve, protect, and maintain terrestrial plant and wildlife habitat diversity on lands within the project boundary. The measures shall anticipate, and to the extent possible be consistent with, the TRMP Vegetation Management Strategy specified in Exhibit E of the Settlement Agreement.

(**b)** ***Exotic and Invasive Vegetation Management.*** The licensees shall inventory and map noxious weed presence, distribution and density, and control, suppress, or eradicate existing infestations at sites identified in the TRMP Outline, Exhibit E of the Settlement Agreement. The weed management measures shall anticipate, and to the extent possible be consistent with, the TRMP Exotic and Invasive Vegetation Management Strategy.

(c) ***Bald Eagle Nesting Productivity Surveys.*** The licensees shall conduct bald eagle nesting surveys to monitor trends in nesting productivity and success, and the status of bald eagle nesting pairs that use the project reservoirs. The nesting surveys shall be conducted using the protocol described in the TRMP Outline, Exhibit E of the Settlement Agreement.

(d) ***Bald Eagle Communal Roost Surveys.*** The licensees shall conduct fall and winter communal roost surveys at known bald eagle communal roosts associated with the project reservoirs. The surveys shall be conducted using the protocols described in the TRMP Outline, Exhibit E of the Settlement Agreement.

(e) ***Bald Eagle Winter Use Surveys.*** The licensees shall conduct winter use surveys to monitor bald eagle winter use of the project reservoirs. The surveys shall be conducted using the protocol described in the TRMP Outline, Exhibit E of the Settlement Agreement.

(f) ***Golden Eagle Nesting Productivity Surveys.*** The licensees shall conduct golden eagle nesting surveys to monitor trends in nesting productivity and success, and the status of golden eagle nesting pairs associated with the project reservoirs. The surveys shall be conducted using the protocols described in the TRMP Outline, Exhibit E of the Settlement Agreement.

(g) ***Osprey Nesting Productivity Surveys.*** The licensees shall conduct osprey nesting surveys to monitor trends in the nesting productivity of ospreys that nest in association with the project reservoirs. The licensees shall conduct the surveys using the protocol described in the TRMP Outline, Exhibit E of the Settlement Agreement.

(h) ***Avian Power Line Electrocution and Collision.*** The licensees shall survey project-related distribution lines to identify the potential for avian electrocution. These lines include the following: (1) 12.5-kilovolt (kV) line to Round Butte powerhouse (station service feeder); (2) 12.5-kV line to Round Butte dam, spillway, and auxiliary station feeder; and (3) 12.5-kV line to the Reregulating dam. To the extent practicable and following guidelines in the publication "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996" (APLIC 1996) (or the most current Avian Power Line Interaction Committee [APLIC] publication for avian protection), the licensees shall rebuild or retrofit any line or power pole involved in a bird fatality or injury or identified as a high risk for avian electrocution to render the facility raptor-safe. The plan shall include a provision for the licensees to notify the Commission prior to rebuilding or retrofitting the line or power pole.

(i) ***Waterfowl Surveys.*** The licensees shall conduct waterfowl nesting productivity and winter use surveys to monitor trends in waterfowl production and use associated with the project reservoirs. The surveys shall be conducted using the protocols described in the TRMP.

(j) ***Pelton Fish Ladder Wildlife Protection.*** The licensees shall install five small animal crossings over the Pelton Fish Ladder, remove the shotgun style outlets from six culverts that pass under the fish ladder, and install a wildlife diversion device in the dirt canal section of the fish ladder to improve crossing opportunities for small mammals, reptiles, and amphibians, and reduce the potential for animal entrapment. The plan shall include detailed design drawings for these activities.

(k) ***Agency Coordination.*** The licensees shall provide for agency coordination as specified in Proposed Article 44 of the Settlement Agreement file on July 30, 2004.

(l) ***Implementation Schedule.*** The licensees shall include an implementation schedule with the plan.

The licensees shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Terrestrial Resources Working Group established by Article 402 and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Working Group to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 424. ***Recreation Resources Implementation Plan.*** (a) Within one year of license issuance, the licensees shall file with the Commission, for approval, a Recreation Resources Implementation Plan (RRIP) to enhance recreation resources at the Pelton Round Butte Project. The licensees shall prepare the plan after consultation with the Recreation Resources Working Group established pursuant to Article 402 and in conjunction with the Terrestrial Resources Management Plan required by Article 422. The RRIP shall include the measures identified in the Exhibit G to the Settlement Agreement except that in lieu of funding the Lake Billy Chinook offshore boat mooring study, the RRIP shall include a provision for the licensees to file, after consultation with the Recreation Resources Working Group, an evaluation of the technical feasibility of implementing an off-shore boat moorage program at Lake Billy Chinook along with any recommendations for the installation and maintenance of up to 50 offshore moorages in Lake Billy Chinook.

In addition, operation and maintenance of Perry South Campground, Monty Campground, and Street Creek shall be provided for as stipulated in Proposed Article 52 of the Settlement Agreement filed on July 30, 2004.

(b) The RRIP shall include the following objectives:

(i) provide adequate and safe public access to the project lands and waters;

(ii) avoid or minimize recreation related impacts on sensitive resources; and

(iii) provide a range of feasible and desirable recreation opportunities based on information collected and filed pursuant to the reporting requirements for FERC Form 80 – Recreation Report, section 8 of the Commission's regulations (18 C.F.R. 8.11), and applicable existing management plans.

(c) In addition to the measures specifically identified in the "List of Measures to be included in the Recreation Resources Implementation Plan," (Exhibit G to the Settlement Agreement) with the exception noted in item (a) above, the licensees shall implement measures designed to mitigate for project-related recreation authorized or implemented by entities other than the licensees, provided however, that the actions taken by those entities are consistent with the applicable existing management plans. Such additional measures shall be developed as needed in consultation with the Recreation Resources Working Group.

(d) Every 10 years beginning in the tenth year following license issuance, the licensees shall convene a meeting of the Recreation Resources Working Group to discuss unforeseen impacts of recreation patterns in the project area (if any) and to agree upon appropriate management actions or mitigation measures.

(e) The licensees shall file with the Commission, after consultation with the Recreation Resources Working Group, an annual report documenting the implementation of the RRIP. The annual RRIP report shall:

(i) Identify the measures implemented as scheduled in the RRIP.

(ii) Identify next year's proposals for implementing scheduled recreation management actions.

(iii) Reconcile and document differences between each year's proposals and any replacement or additional measures agreed upon by the licensees and the affected agencies.

(iv) Document consultation related to the RRIP.

(v) Document the results of monitoring of completed actions (to the extent monitoring is necessary for any particular action) to ensure proper implementation and effectiveness.

The licensees shall include with the plan, an implementation schedule, documentation consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Recreation Resources Working Group, and specific descriptions of how the Working Group's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Working Group to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Some of the measures specified in the RRIP apply to lands that are located outside of the project boundary. These measures include: (1) funding improvements and annual maintenance of dispersed campsites at BLM Beach, the cove area downstream from Cove Marina, west shore area of the Crooked River arm downstream from the bridge, and west shore of the Deschutes River arm downstream from the bridge; (2) making improvements to and funding NEPA compliance for Monty Campground; and (3) making improvements to and funding activities at Cove Palisades State Park. These lands in which the activities will take place shall be brought into the project boundary and the exhibit G drawings shall be revised and filed pursuant to Article 301. The 90-day deadline for filing the revised exhibits stipulated in Article 301 shall be referenced to the completion date of the specified improvements (*e.g.*, construction, modification, etc.). All structures or facilities constructed or installed in accordance with this plan shall be shown on the exhibit drawings filed pursuant to Article 301.

Article 425. ***Recreation Funding Measures.*** Within one year of license issuance, the licensees shall, for the enhancement of recreation resources at the Pelton Round Butte Project:

(a) Enter into an agreement with the Confederated Tribes of the Warm Springs to provide annual funding for maintenance and operation of Indian Park Campground and Chinook Island Day-Use Area;

(b) Provide annual funding for operation and maintenance (O&M) of Pelton and Round Butte Overlook parks, and Pelton Wildlife Overlook;

(c) Fund a project staff person to coordinate implementation of the Recreation Resources Implementation Plan required by Article 424 and to provide for necessary resource coordination pursuant to the terms of this license;

(d) Fund seasonal O&M costs for one new, self-contained floating restroom for use by boaters on the Metolius River arm of Lake Billy Chinook near the Bureau of Land Management beach east of Three Rivers Recreation Area; and

(e) Close and rehabilitate the road leading into the Balancing Rocks area, develop a trail, and provide a small roadside parking area. The trail and small roadside parking area shall be brought into the project boundary and shown on the exhibit drawings filed

pursuant to Article 301. The 90-day deadline for filing the revised exhibits stipulated in Article 301 shall be referenced to the completion date of the specified improvements (*e.g.*, construction, modification, etc.).

Within one year of license issuance, the licensees shall file with the Commission for approval a copy of the agreement specified in item (a) and documentation that the requirements of items (b) through (e) have been completed. If the agreement specified in item (a) is not reached, the licensees shall provide written explanation of the dispute, including the positions taken, in lieu of the agreement. The Commission reserves the right to require additional measures consistent with the terms of this article in the event an agreement is not reached.

Article 426. ***Emergency Communications.*** Within six months of license issuance, the licensees shall:

(a) file with the Commission, for approval, a report detailing the results of a communications coverage study designed to address the following objectives:

(i) Emergency/Safety (ability for emergency response personnel to contact each other and to contact external emergency services);

(ii) Day-to-day management; and

(iii) General public communication outside of the immediate Pelton Round Butte Project reservoir areas.

The report shall be prepared after consultation with the Recreation Resources Working Group established by Article 402. The licensees shall include with the report documentation of consultation, copies of comments and recommendations on the completed report after it has been prepared and provided to the Working Group, and specific descriptions of how the Working Group's comments are accommodated by the report. The licensees shall allow a minimum of 30 days for the Working Group to comment before filing the report with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the report. Implementation of measures specified in the report shall not begin until the report is approved by the Commission. Upon Commission approval, the licensees shall implement measures specified by the report, including any changes required by the Commission, and as provided in paragraph (b) of this article.

(b) Within one year of license issuance, fund measures identified in the communications coverage study as necessary for emergency/safety communications, including measures to provide coverage of existing "dead areas" on project reservoirs using two-toned radio frequencies.

Article 427. ***Programs for Interpretation and Education.*** Within five years of license issuance, the licensees shall file for Commission approval an Integrated Interpretation and Education Plan (I & E Plan) for the Pelton Round Butte Project to inform the public about resource and project features in the project area at a total expense to the licensees of no more than $75,000 in then-current dollars (unless otherwise directed by the Commission under Article 438). The I & E Plan shall be developed in consultation with the Recreation Resources Working Group established pursuant to Article 402 and the Oregon State Historic Preservation Officer.

The I&E Plan shall address resources in the project area, including but not limited to fishery and aquatic resources, terrestrial and wildlife resources, cultural resources, tribal culture and history, project history, and energy production. Themes related to terrestrial and wildlife resources may include resource stewardship; threatened, endangered and sensitive species biology and protection; protection of sensitive plant communities; riparian habitat restoration; winter range protection; mule deer biology and habitat requirements; and causes and effects of human disturbance. Implementation elements may include signs and signboards at designated campgrounds and at other recreation facilities within the project area. Annually, for the term of the license, the licensees shall implement agreed-upon elements of the I & E plan at an annual cost of not more than $20,000 (unless otherwise directed by the Commission under Article 438), which amount shall be escalated as provided in Article 407.

The licensees shall include with the plan, an implementation schedule, documentation of agency and tribe consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribe, and specific descriptions of how the agencies' and tribe's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the agencies and tribe to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 428. ***Shoreline Management Plan.*** Within one year of license issuance, the licensees shall, after consultation with the Shoreline Management Working Group established pursuant to Article 402, file for Commission approval a Shoreline Management Plan (SMP) for the Pelton Round Butte Project. The SMP shall include standards and guidelines for new shoreline development, installation of new docks, and modification of existing docks.

The licensees shall include with the SMP, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed SMP after it has been prepared and provided to the Shoreline Management Working Group, and specific descriptions of how the Working Group's comments are accommodated by the SMP. The licensees shall allow a minimum of 30 days for the Working Group to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the SMP. Implementation of the SMP shall not begin until the SMP is approved by the Commission. Upon Commission approval, the licensees shall implement the SMP, including any changes required by the Commission.

Article 429. ***Shoreline Erosion Plan.*** Within one year of license issuance, the licensees shall, in consultation with the Shoreline Management Working Group established pursuant to Article 402, file for Commission approval, a Shoreline Erosion Plan to monitor and control stream and impoundment shoreline erosion at the Pelton Round Butte Project. The plan, at a minimum, shall include the following objectives and measures listed below.

(1) The following objectives of the plan shall be to:

(a) Discuss the conditions and probable causes of, as well as potential measures for, shoreline erosion;

(b) Describe agreed upon actions, including, but not limited to the measures described herein; and

(c) Provide that all actions conducted under the shoreline erosion plan shall be developed and implemented in consultation with the Shoreline Management Working Group established pursuant to Article 402.

The licensees shall develop the plan using the annotated outline in Section E-V11 – Land Management and Use of the Final Joint Application Amendment, and any other applicable information, in consultation with the Shoreline Management Working Group.

(2) Within three years of license issuance, the licensees shall commence rehabilitation at, but not limited to, the following existing erosion sites:

(a) Chinook Island;

(b) Indian Park Campground;

(c) Juniper Canyon;

(d) Big Canyon;

(e) Dispersed sites on the east bank just south of Round Butte dam;

(f) Shoreline of the cove at Perry South Campground and along Spring Creek;

(g) Shoreline upstream of the Upper Deschutes Day-Use Area;

(h) Pelton Park;

(i) Bureau of Land Management Beach east of the Three Rivers Marina; and

(j) shoreline and access road at Monty Campground.

(3) The licensees shall conduct, or provide for an entity to conduct, a baseline survey of the project area to identify, map, and assess existing erosion sites that are project-related and are significantly affecting terrestrial habitats, fish habitats or water quality; or that, if the site is located on the Confederated Tribes of the Warm Springs Reservation, is causing or is likely to cause significant loss of shoreline. For each erosion site identified, the licensees shall include a re-locatable topographic survey transect, notes on sediment types, vegetative condition or fish or wildlife habitat existing on the site, photographic documentation, and an analysis of the probable causes of the erosion.

(4) Beginning in the first year following license issuance, and after consultation with the Shoreline Management Working Group, the licensees shall conduct annual monitoring of the project area to monitor existing erosion sites and identify and map any new project-related erosion sites. This annual monitoring shall follow the pattern and standards established by the baseline survey performed above and shall include the opportunity for the Shoreline Management Working Group to accompany the licensees' survey crew in the field. Information that is unchanged from any prior year's survey shall be noted, but need not be repeated. Annual monitoring of sites shall occur until

documentation of stable or improved conditions, after which additional monitoring can be changed based on consultation with the Shoreline Management Working Group and Commission approval. Annual monitoring shall also include an assessment of ongoing mitigation activities.

(5) No later than March 31 of each year after Commission approval of the Shoreline Erosion Plan, the licensees shall file with the Commission an annual report, prepared after consultation with the Shoreline Management Working Group, which identifies soil erosion control measures; describes annual maintenance of erosion control sites; identifies any other soil erosion control measures including those undertaken during emergency situations; describes coordination with other resource management plans, such as the Cultural Resources Management Plan required by Article 429 of this license; and documents consultation. Any proposed changes in the treatment or monitoring status of the erosion control site shall include the rational for such changes.

(6) Further, the licensees shall monitor identified erosion sites following (i) any event at the Round Butte development where the outflow exceeds inflow by more than the maximum turbine flow, (ii) any drawdown of Lake Simtustus resulting in 7 or more feet of reservoir elevation change in a 24-hour period, or (iii) other events that could rapidly change the shoreline condition.

(7) The licensees shall develop site-specific measures for the erosion sites listed in (2) above, and for any project-related erosion sites identified during the baseline survey or subsequent annual monitoring. The licensees shall give preference to "soft" erosion control techniques including, bioengineering, planting and seeding of appropriate native riparian species, sediment replenishment, or anchored woody debris, but may, when necessary, utilize "hard" erosion control, including use of geotextiles, rock armoring, or other hard surfaces. The licensees shall develop the site-specific measures after consultation with the Shoreline Management Working Group.

The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Shoreline Management Working Group, and specific descriptions of how the Working Group's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Working Group to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 430. ***Aesthetic Resources Protection Plan.*** Within one year of license issuance, the licensees shall, after consultation with the Recreation Resources Working Group established pursuant to Article 402, file with for Commission approval, an Aesthetic Resources Protection Plan (ARPP) to protect and enhance aesthetic resources at the Pelton Round Butte Project.

The ARPP shall include, but not necessarily be limited to, provisions for the following:

(1) Fish Ladder: Coat the outside surface that is visible from the wildlife viewing platform (approximately 0.25 mile) with Permeon.

(2) Pelton Dam Road: (a) Investigate, in the 10th year following license issuance, whether feasible and economic solutions exist to reduce the color contrast associated with the road cuts; and (b) within 10 years of license issuance, replace existing guardrail material with "rusted rail" guardrail material.

(3) Round Butte Switchyard: When transformers are being replaced for regular maintenance and replacement, replace them with grey transformers, whenever available.

(4) Pelton Park and Round Butte Overlook Park: (a) Apply compatible paint color on Pelton Park store and apartment building; (b) treat interior of Overlook building with compatible colors; and (c) when replacement is otherwise required, phase out existing fencing to non-galvanized, vinyl-coated fencing adjacent to the licensees' recreation sites or project maintained public access roads to the parks.

(5) Round Butte Dam and the Round Butte Powerhouse Area: (a) Paint the Jefferson County Sheriff's boat house with a color agreed upon with the U.S. Forest Service; and (b) consult with the Recreation Resources Working Group regarding (i) appropriate colors for any fish facilities constructed pursuant to the Fish Passage Plan (Condition 1 of Appendices C and D), and (ii) appropriate treatments for any existing fish facilities on the top of Round Butte dam or in the forebay that remain as long-term components of the fish passage program.

The licensees shall prepare the plan after consultation with the Recreation Resources Working Group. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribe, and specific descriptions of how the Working Group's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Working Group to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 431. ***Project-related Road Maintenance.*** Within one year of license issuance, the licensees shall file for Commission approval a plan to provide for upgrades and maintenance of roads necessary for project purposes, which may include, but are not limited to, relevant portions of U.S. Forest Service (Forest Service) roads FS 11 and FS 1170, Dizney Lane, Pelton Dam Road, Jordan Road, and other roads adjacent to the project contemplated by Appendix D of the Settlement Agreement filed on July 20, 2004, that are required for access to project lands, waters, and facilities. The plan shall include provisions to bring into the project boundary any roads on which ongoing maintenance is to be provided under the license; such roads shall be shown on the exhibit drawings filed pursuant to Article 301. For each road, the 90-day deadline stipulated in Article 301 for filing the revised exhibits shall be referenced to the completion date of the initial maintenance activity.

The licensees shall prepare the plan after consultation with the Forest Service and Jefferson County. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Forest Service and the county, and specific descriptions of how the entities' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the entities to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 432. ***Historic Properties.*** The licensees shall implement the "Programmatic Agreement (PA) among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, the State of Oregon, State Historic Preservation Officer, and the Confederated Tribes of the Warm Springs Reservation, Tribal Historic Preservation Officer for Managing Historic Properties That May be Affected By A License Issuing to Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon for the Continued Operation of the Pelton Round Butte Hydropower Project in Jefferson County Oregon", executed on December 6, 2004, including but not limited to the final Cultural Resources Management Plan (CRMP) for the Project (Exhibit J of the Settlement Agreement filed on July 30, 2004). In the event that the Programmatic Agreement is terminated, the

licensees shall implement the provisions of the final CRMP. The Commission reserves the authority to require changes to the CRMP at any time during the term of the license. If the Programmatic Agreement is terminated prior to Commission approval of the CRMP, the licensees shall obtain approval before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the Project's area of potential effect.

Article 433. ***Lower River Gravel Study.***

(a) Within one year of license issuance, the licensees shall file for Commission approval a detailed Lower River Gravel Study Plan, as described in the Lower River Gravel Study Design, Exhibit I to the Settlement Agreement. The plan shall evaluate gravel mobility, supply, and use by spawning salmonids in the lower Deschutes River from the Reregulating Dam (RM 100) to the Trout Creek confluence (RM 87.3) and shall be developed in consultation with the Fish Committee established pursuant to Article 402.

(b) As provided in the Lower River Gravel Study Design, Exhibit I to the Settlement Agreement, the study plan shall include a geomorphic component and a biological monitoring component.

(1) The geomorphic component of the study shall assess the impacts of the project on downstream gravel availability and channel morphology and to test the dynamics and quality of augmented gravels and shall include the following elements:

(i) Sediment transport monitoring.

(a) Placement of radio-tagged and colored tracer rocks (or rocks with exotic lithologies) at six to seven cross sections between the Reregulating dam and Trout Creek.

(b) Establishment of survey cross sections at the tracer gravel sites to monitor whether tracer particles had been displaced by that year's flow, or by flows greater than 6,500 cubic feet per second (cfs).

(c) Measurement of bedload transport at the Warm Springs Bridge (U.S. Highway 26) on rising and falling limbs of flows exceeding 5,500 cfs.

(d) Placement of columns of painted rocks or scour chains at each cross section to determine depth of scour and any subsequent filling.

(e) If annual monitoring described in paragraphs (a) – (d) show that sediment transport is occurring, a provision for the licensees to develop a plan for Commission approval and in consultation with the Fish Committee and Fish Agencies referenced in Article 402 to resample bed material size at the sample sites previously studied by the licensees.

(ii) Experimental Gravel Augmentation Program.

(a) The experimental gravel augmentation program shall provide for the addition, starting one year prior to the initiation of selective water withdrawal, of a total of 300 cubic yards of gravel distributed amongst at least three sites between the Reregulating dam and Shitike Creek. Sites shall be chosen in consultation with the Fish Committee to minimize potential adverse effects of the augmented gravel, including disturbance to existing spawning habitat.

(b) The licensees shall obtain all necessary tribal, federal and state permits or approvals, including but not limited to Wild and Scenic River Act Section 7 consistency determinations and Clean Water Act Section 404 (dredge/fill) permits, prior to any test gravel placement.

(2) The biological monitoring component shall monitor the quality of the augmented gravels to determine if the addition of new gravel between the Reregulating dam (RM 100) and the mouth of Shitike Creek (RM 97) would be necessary and beneficial to salmonid populations and shall include the following elements:

(i) Determination of relative use of spawning sites above and below Shitike Creek to determine if relative spawner use is shifting downstream as spawning habitat quality and quantity changes upstream.

(ii) Measurement of steelhead and rainbow spawning habitat area above and below Shitike Creek.

(iii) Measurement of spawner use of experimental gravel augmentation sites compared to use of other spawning areas upstream of Shitike Creek.

(iv) Measurement of spawning gravel quality parameters including permeability, and inter-gravel dissolved oxygen (IGDO).

(v) Comparison of the survival of rainbow trout embryos within redds at the three study sites above Shitike Creek and the three study sites below Shitike Creek.

(vi) Comparison of invertebrate populations at the gravel augmentation sites and non-augmented control sites.

(c) After five years of study, the licensees shall submit annual monitoring results of the gravel study to the Commission and a three-member expert review panel consisting of experts in geomorphology and fisheries selected by the licensees, in consultation with the Fish Committee.

(d) The licensees shall request that the expert review panel believes: (1) the gravel study should be continued; (2) the licensees should implement a long-term gravel augmentation program, or (3) no further study or augmentation is needed. If the expert panel believes that (1) the project is causing impacts that could be mitigated by gravel augmentation, including examination of whether the project may be having deleterious effects on channel bedforms and spawning gravel quantity and quality, (2) that the augmentation test did not adversely affect downstream bank stability or cause downstream pool filling, and (3) that augmentation would be beneficial to fish habitat and fish populations, the licensees shall request that the expert review panel notify the Fish Committee of its conclusion that a long-term gravel augmentation action plan should be implemented or that the current study program should be extended. If, after consideration of the report of the expert panel, the Fish Committee believes that a long-term gravel augmentation program is required or that an extended study program is required, the licensees shall, after consultation with the Fish Committee develop and file a plan for Commission approval to implement such program.

(e) The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 434. ***Lower River Wood Management.*** Within one year of license issuance, the licensees shall file for Commission approval a Large Wood Management Plan (LWMP), developed in consultation with the Fish Committee established pursuant to Article 402. The purpose of the LWMP is to provide for (i) the management of floating wood greater than 8 inches in diameter (at the small end) by 10 feet long that enters Lake Billy Chinook and (ii) the placement of large wood along the project reservoir shorelines for the protection of riparian plantings. The LWMP shall include a monitoring plan to be conducted through the term of the license, for the evaluation of the effectiveness of placed wood, including river transport (for wood moved below the project), use by wildlife and fish, and as appropriate, erosion control for the establishment of shoreline riparian vegetation. The LWMP shall provide that the management of large wood be adapted to reflect improvements identified through monitoring to improve the erosion control function of shoreline wood and the habitat value of all wood placements for riparian vegetation, fish and wildlife. At a minimum, the plan shall include:

(a) Description of methods to be used for collection, transport and placement of large wood entering Lake Billy Chinook (minimum size of 8 inches in diameter (at the small end) by 10 feet long);

(b) Guidelines for placement of large wood in the Lower Deschutes River or Lake Billy Chinook;

(c) Notification and reporting requirements, for when wood is collected, transferred and placed;

(d) Guidelines to transfer large wood entering Lake Billy Chinook. At a minimum these guidelines shall include:

(1) Transfer of floating wood collected east of Rattlesnake Point in the Metolius Arm, and the Deschutes and Crooked River Arms of Lake Billy Chinook to the Lower Deschutes River for fish habitat improvement;

(2) Anchoring wood found floating west of Rattlesnake Point in the Metolius Arm of Lake Billy Chinook for shoreline wildlife loafing sites, riparian vegetation plantings, erosion control, or shallow water juvenile salmonid cover;

(3) Replacement of an equal volume, type and sizes of wood that is retained in the Metolius Arm of Lake Billy Chinook; and

(4) Logs found in Lake Billy Chinook that were found to have been illegally cut from the Metolius River will be replaced in the Metolius River, if feasible.

(e) Integration with the assessment of the Terrestrial Resources Work Group established pursuant to Article 402 of available sites for riparian vegetation establishment; and

(f) Monitoring plan for the evaluation of the effectiveness of placed wood, including river transport (for wood moved below the project), use by wildlife and fish, and as appropriate, erosion control for the establishment of shoreline riparian vegetation. If improvements are identified through monitoring, then the management of wood shall be adapted to improve the erosion control function of shoreline wood and habitat value of all wood placements for riparian vegetation, fish, and wildlife, after Commission approval.

The plan shall be developed in consultation with the Fish Committee. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and specific descriptions of how the Committee's comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 435. ***Lower River Fish Habitat Enhancement.*** Within one year of license issuance, the licensees shall file for Commission approval a plan to implement the Trout Creek habitat enhancement project described in the Exhibit F to the Settlement Agreement. The plan shall be consistent with the requirements of Article 406 for those portions of the project on U.S. Forest Service or Bureau of Land Management lands. The plan shall be developed in consultation with the Fish Committee established pursuant to Article 402 and Fish Agencies referenced in Article 402.

The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Fish Committee and Fish Agencies and specific descriptions of how the Committee's and Agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the Committee and Agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 436 . ***Pelton Round Butte Fund.***

(a) Within 6 months of license issuance, the licensees shall establish the Pelton Round Butte Fund (the "Fund") in the initial amount of a $3.5 million credit (2003 dollars) to fund enhancement projects for fish and wildlife resources and habitats in the Deschutes River Basin. The Fund shall be a tracking account held by licensees with all accrued interest being credited to the Fund. The Fund shall be dedicated to the funding of enhancement projects in accordance with this license article. Following this initial credit, the licensees shall make periodic credits as specified in the Pelton Round Butte Fund Implementation Plan, Exhibit H to the Settlement Agreement. Amounts credited to the Fund shall be escalated as provided in the Pelton Round Butte Fund Implementation Plan.

(b) Amounts credited to the Fund shall not be used to defray the cost of administrative, legal, and overhead costs associated with the management of the Fund, which shall be borne by the licensees. Any funds remaining unexpended at the end of the license term, including any annual licenses, shall be returned to the licensees.

(c) The licensees shall utilize the Fund in accordance with the provisions of the Pelton Round Butte Fund Implementation Plan, Exhibit H of the Settlement Agreement. Any revisions to the criteria and evaluation system as contemplated by section II.D.4 of Exhibit H shall only be implemented after Commission approval.

(d) By March 31 of each year during the license term, licensees shall provide the Commission for approval and the parties to the Settlement Agreement with an annual written report setting forth and describing all Fund activity during the previous calendar year. In addition to any other Fund activity, this report shall list withdrawals from the Fund for mitigation and enhancement projects and itemize costs associated with each project. The licensees shall prepare the report in accordance with the Pelton Round Butte Fund Implementation Plan, Exhibit H to the Settlement Agreement, after consultation with the Governing Board provided for in Exhibit H of the Settlement Agreement, or, if the Settlement Agreement has become void, in consultation with Bureau of Indian Affairs, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, Oregon Department of Environmental Quality, U.S. Forest Service, and Branch of Natural Resources and Water Control Board of the Confederated Tribes of the Warm Springs Reservation of Oregon, and any non-governmental organizations previously represented on the Governing Board (the Successor Agencies). When a draft report has been prepared, it shall be provided to the Governing Board or the Successor Agencies, as

applicable, for 30-day review and comment. The licensees shall include with the final report documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final report accommodates all comments and recommendations. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information.

Article 437. ***Reservation of Authority-Fishways.*** Pursuant to section 18 of the Federal Power Act, authority is reserved to the Commission to require the licensees to construct, operate, and maintain, or provide for the construction, operation, and maintenance of such fishways as may be prescribed by either the Secretary of the Interior or the Secretary of Commerce.

Article 438. ***Expenditures.*** Notwithstanding the limitation on expenditures included in this license, the Commission reserves the right to require the licensees to undertake such measures as may be appropriate and reasonable to implement approved plans and other requirements in this license.

Article 439. ***Columbia River Basin Fish and Wildlife Program.*** The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, and the Northwest Power Planning Council, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 440. ***Threatened and Endangered Species Protection Plan.*** Within six months of license issuance, the licensees shall file for Commission approval a Threatened and Endangered Species Protection Plan. The plan shall include: (1) provisions for all measures stipulated in the terms and conditions implementing the reasonable and prudent measures filed by the U.S. Fish and Wildlife Service and National Marine Fisheries Service on November 3, 2004, and February 28, 2005, respectively and (2) an implementation schedule. The reasonable and prudent measures and terms and conditions are attached to this license as Appendices E and F for reference.

As part of the plan, the licensees may reference measures implemented under other articles and ordering paragraphs of this license, as applicable, in lieu of including the measures as provisions of the plan.

The licensees shall prepare the plan after consultation with the Fish Committee and Terrestrial Resources Working Group. The licensees shall include with the plan, an implementation schedule, documentation of consultation, copies of comments and recommendations of the plan after it has been prepared and provided to the consulted entities, and specific descriptions of how the consulted entities' comments are

accommodated by the plan. The licensees shall allow a minimum of 30 days for the consulted entities to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project –specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensees shall implement the plan, including any changes required by the Commission.

Article 441. ***Reservation of Authority-Land Reservations.*** The licensees shall implement, upon order of the Commission, such additional measures as may be identified by the Secretary of the Interior pursuant to the authority provided in section 4(e) of the Federal Power Act, as necessary to ensure the adequate protection and utilization of the public land reservations under the authority of the Department of the Interior, Bureau of Land Management.

Article 442. ***Reservation of Authority-Indian Reservation.*** The licensees shall implement, upon order of the Commission, such measures as may be identified by the Secretary of the Interior, pursuant to section 4(e) of the Federal Power Act, 16 U.S.C. § 797(e), as necessary for the protection and utilization of the Warm Springs Indian Reservation.

Article 443. ***Use and Occupancy.*** (a) In accordance with the provisions of this article, the licensees shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensees may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensees shall also have continuing responsibility to supervise and control the use and occupancies, for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensees for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensees shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensees may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensees shall require multiple use and occupancy of facilities for access to project lands or waters. The licensees shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensees shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensees may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensees' costs of administering the permit program. The Commission reserves the right to require the licensees to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensees may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensees may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 5 acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensees must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensees to file an application for prior approval, the licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensees shall consult with Federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensees shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation,

and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundary. The project boundary may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(g) The authority granted to the licensees under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(L) The licensees shall serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(M) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensees' failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

Oregon Division of Environmental Quality
Section 401 of the Clean Water Act
Terms and Conditions

A. Water Quality Management and Monitoring Plan

Within 90 days of issuance of the §401 certification, the Joint Applicants, in consultation with ODEQ, shall revise the Water Quality Management and Monitoring Plan attached to these certification conditions as Exhibit A and submit the revised plan to ODEQ for approval.[73] The plan as approved by ODEQ is hereafter referred to in these certification conditions as the "WQMMP." Upon ODEQ approval, the WQMMP becomes a part of the §401 certification for the Project for purposes of any federal license or permit thereafter issued.

B. Selective Water Withdrawal Facility Construction and Operation

By no later than five years from the date of receiving a new FERC license for the Project, the Joint Applicants shall construct, test, and commence operation of the Selective Water Withdrawal (SWW) facility described in the Joint Applicants' §401 application.

C. Temperature

1. The SWW facility shall be operated in accordance with the Temperature Management Plan (TMP) contained in the WQMMP. The TMP shall identify those measures that the Joint Applicants will undertake to reduce the Project's contribution to exceedances of water quality standard criteria for temperature.

2. Upon issuance of a new FERC license for the Project, the Joint Applicants shall implement the Water Quality Monitoring Plan (WQMP) contained in the WQMMP. The WQMP shall specify the temperature monitoring reasonably needed to determine (a) whether the temperature criteria continue to be exceeded in waters affected by the Project, (b) the success of the TMP in reducing the Project's contribution to any continued exceedances of the criteria, and (c) any additional measures that may be needed to reduce the Project's contribution to exceedances of the criteria.

[73] The revised Water Quality Management and Monitoring Plan (WQMMP) has been completed by the licensees and can be found in Appendix C of this license.

3. Upon the U.S. Environmental Protection Agency's final approval or adoption of a Total Maximum Daily Load (TMDL) for temperature in the portion of the Deschutes River affected by the Project, ODEQ may reevaluate the Joint Applicants' TMP in light of information acquired since the certification of the Project. If additional temperature reduction measures are feasible and necessary to meet a Load Allocation (LA) for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL), ODEQ may require submittal of a revised TMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of the attached Exhibit A and incorporated into the WQMMP. If the TMDL does not include a specific LA for the Project, references to the "LA for the Project" shall refer to the LA that encompasses Project-related thermal contributions to waters affected by the Project.

4. At the end of the period determined by ODEQ to be necessary to implement the TMDL for temperature in waters affected by the Project, ODEQ may:

(a) Determine whether the LA for the Project has been achieved.

(b) If the LA for the Project has been achieved, the Joint Applicants shall continue to implement the TMP unless, at the Joint Applicants' request, ODEQ approves a modification or termination of the TMP.

(c) If the LA for the Project has not been achieved, ODEQ may reevaluate the TMP to determine whether additional measures to reduce the Project's contribution to exceedances of the temperature criteria are necessary and feasible. If additional measures are necessary and feasible, ODEQ may require submittal of a revised TMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the TMP that would require the Project to reduce water temperatures beyond what would be required by the LA for the Project shall be effective only upon modification of the LA to reflect the reduced load allocation.

(d) If (i) additional measures to reduce the Project's contribution to exceedances of the temperature criteria are necessary to achieve the LA but the measures are not feasible, and (ii) the water quality standard has not been achieved for waters affected by the Project, ODEQ shall verify whether all feasible measures have been undertaken by all required parties within the Deschutes River Basin to achieve the TMDL for waters affected by the Project. If all feasible measures have not been undertaken, ODEQ, in conjunction with designated management agencies, shall take steps to ensure that

all feasible measures are undertaken. If all feasible measures have been undertaken, ODEQ shall determine whether designated beneficial uses of waters affected by the Project are adversely affected by the failure to achieve the TMDL. If the designated beneficial uses are not adversely affected by the failure to achieve the TMDL, the Joint Applicants shall continue to implement the TMP unless, at the Joint Applicants' request, ODEQ approves modification or termination of the TMP. If the designated beneficial uses are adversely affected by the failure to achieve the TMDL, ODEQ may modify the TMP to require additional temperature measures, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the TMP that would require the Project to reduce water temperatures beyond what would be required by the LA for the Project shall be effective only upon modification of the TMDL to reflect the reduced load allocation.

5. Any Project-related instream temperature increase of 0.25°F or less above the relevant criterion shall not be deemed to contribute to an exceedance of the temperature criterion or to a violation of the temperature water quality standard.

6. ODEQ may make or require reasonable modifications to the WQMP that it considers to be reasonable and feasible if:

(a) The WQMP proves inadequate to provide the data needed to make the determinations described in certification condition 2, above; or,

(b) Modifications to the TMP require or indicate a need for modification to the WQMP.

7. With the approval of ODEQ, the Joint Applicants may cease implementing the TMP and WQMP or may implement a modified TMP and WQMP. ODEQ may approve termination or modification if ODEQ determines that it will not impair the achievement of any LA for the Project for temperature and will not contribute to the exceedance of the relevant temperature criterion in waters affected by the Project.

8. The Joint Applicants shall implement modifications requested by ODEQ in accordance with these certification conditions and the WQMMP.

D. Dissolved Oxygen

1. The SWW facility shall be operated in accordance with the Dissolved Oxygen Management Plan (DOMP) contained in the WQMMP. The DOMP shall identify those measures that the Joint Applicants will undertake to reduce the Project's contribution to violations of water quality standard criteria for dissolved oxygen.

2. Upon issuance of a new FERC license for the Project, the Joint Applicants shall implement the Water Quality Monitoring Plan (WQMP) contained in the WQMMP. The WQMP shall specify the dissolved oxygen monitoring reasonably needed to determine (a) whether the dissolved oxygen criteria continue to be violated in waters affected by the Project, (b) the success of the DOMP in reducing the Project's contribution to any continued violations of the criteria, and (c) any additional measures that may be needed to reduce the Project's contribution to violations of the criteria.

3. Upon the U.S. Environmental Protection Agency's final approval or adoption of a Total Maximum Daily Load (TMDL) for dissolved oxygen in the portion of the Deschutes River affected by the Project, ODEQ may reevaluate the DOMP in light of information acquired since the certification of the Project. If additional dissolved oxygen improvement measures are feasible and necessary to meet a Load Allocation (LA) for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL), ODEQ may require submittal of a revised DOMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. If the TMDL does not include a specific LA for the Project, references to the "LA for the Project" shall refer to the LA that encompasses Project-related impacts on dissolved oxygen concentrations in waters affected by the Project.

4. At the end of the period determined by ODEQ to be necessary to implement the TMDL for dissolved oxygen in waters affected by the Project, ODEQ may:

(a) Determine whether the LA for the Project has been achieved.

(b) If the LA for the Project has been achieved, the Joint Applicants shall continue to implement the DOMP unless, at the Joint Applicants' request, ODEQ approves a modification or termination of the DOMP.

(c) If the LA for the Project has not been achieved, ODEQ may reevaluate the DOMP to determine whether additional measures to reduce the Project's contribution to exceedances of the dissolved oxygen criteria are necessary and feasible. If additional measures

are necessary and feasible, ODEQ may require submittal of a revised DOMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the DOMP that would require the Project to increase dissolved oxygen concentrations beyond what would be required by the LA for the Project shall be effective only upon modification of the LA to reflect the reduced load allocation.

(d) If (i) additional measures to reduce the Project's contribution to violations of the dissolved oxygen criteria are necessary to achieve the LA but the measures are not feasible, and (ii) the water quality standard for dissolved oxygen has not been achieved for waters affected by the Project, ODEQ shall verify whether all feasible measures have been undertaken within the Deschutes River Basin to achieve the LA for waters affected by the Project. If all feasible measures have not been undertaken by all required parties, ODEQ, in conjunction with designated management agencies, shall take steps to ensure that all feasible measures are undertaken. If all feasible measures have been undertaken, ODEQ shall determine whether designated beneficial uses of waters affected by the Project are adversely affected by the failure to achieve the TMDL. If the designated beneficial uses are not adversely affected by the failure to achieve the TMDL, the Joint Applicants shall continue to implement the DOMP unless, at the Joint Applicants' request, ODEQ approves modification or termination of the DOMP. If the designated beneficial uses are adversely affected by the failure to achieve the TMDL, ODEQ may modify the DOMP to require additional dissolved oxygen measures, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the DOMP that would require the Project to increase dissolved oxygen concentrations beyond what would be required by the LA for the Project shall be effective only upon modification of the TMDL to reflect the reduced load allocation.

5. ODEQ may make or require reasonable modifications to the WQMP that it considers to be reasonable and feasible if:

(a) The WQMP proves inadequate to provide the data needed to make the determinations described in certification condition 2, above; or,

(b) Modifications to the DOMP require or indicate a need for modification to the WQMP.

6. With the approval of ODEQ, the Joint Applicants may cease implementing the DOMP and WQMP or may implement a modified DOMP and WQMP. ODEQ may approve termination or modification if ODEQ determines that it will not impair the achievement of any LA for the Project for dissolved oxygen and will not contribute to violation of dissolved oxygen criteria in waters affected by the Project.

7. The Joint Applicants shall implement modifications requested by ODEQ in accordance with these certification conditions and the WQMMP.

E. Hydrogen Ion Concentration (pH)

1. The SWW facility shall be operated in accordance with the pH Management Plan (PHMP) contained in the WQMMP. In accordance with Oregon Administrative Rule (OAR) 340-04l-0565(2Xd), the PHMP shall identify those measures (including "all practicable measures" in impoundments) that the Joint Applicants will undertake to reduce the Project's contribution to exceedances of the water quality criterion for pH.

2. Upon issuance of a new FERC license for the Project, the Joint Applicants shall implement the Water Quality Monitoring Plan (WQMP) contained in the WQMMP. The WQMP shall specify the pH monitoring reasonably needed to determine (a) whether the pH criterion continue to be exceeded in waters affected by the Project, (b) the success of the PHMP in reducing the Project's contribution to any continued exceedances of the criterion, and (c) any additional measures that may be needed to reduce the Project's contribution to exceedances of the criterion.

3. Upon the U.S. Environmental Protection Agency's final approval or adoption of a Total Maximum Daily Load (TMDL) for pH in waters affected by the Project, ODEQ may reevaluate the PHMP in light of information acquired since the certification of the Project. If additional pH measures are feasible and necessary to meet a Load Allocation (LA) for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL), ODEQ may require submittal of a revised PHMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. If the TMDL does not include a specific LA for the Project, references to the "LA for the Project" shall refer to the LA that encompasses Project-related pH contributions to waters affected by the Project.

4. At the end of the period determined by ODEQ to be necessary to implement the TMDL for pH in waters affected by the Project, ODEQ may:

(a) Determine whether the LA for the Project has been achieved.

(b) If the LA for the Project has been achieved, the Joint Applicants shall continue to implement the PHMP unless, at the Joint Applicants' request, ODEQ approves a modification or termination of the PHMP.

(c) If the LA for the Project has not been achieved, ODEQ may reevaluate the PHMP to determine whether additional measures to reduce the Project's contribution to exceedances of the pH criterion are necessary and feasible. If additional measures are necessary and feasible, ODEQ may require submittal of a revised PHMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the PHMP that would require the Project to reduce pH beyond what would be required by the LA for the Project shall be effective only upon modification of the LA to reflect the reduced load allocation.

(d) If (i) additional measures to reduce the Project's contribution to exceedances of the pH criterion are necessary to achieve the LA but the measures are not feasible, and (ii) the pH water quality standard has not been achieved for waters affected by the Project, ODEQ shall verify whether all feasible measures have been undertaken by all required parties within the Deschutes River Basin to achieve the TMDL for waters affected by the Project. If all feasible measures have not been undertaken, ODEQ, in conjunction with designated management agencies, shall take steps to ensure that all feasible measures are undertaken. If all feasible measures have been undertaken, ODEQ shall determine whether designated beneficial uses of waters affected by the Project are adversely affected by the failure to achieve the TMDL. If the designated beneficial uses are not adversely affected by the failure to achieve the TMDL, the Joint Applicants shall continue to implement the PHMP unless, at the Joint Applicants' request, ODEQ approves modification or termination of the PHMP. If the designated beneficial uses are adversely affected by the failure to achieve the TMDL, ODEQ may modify the PHMP to require additional pH measures, subject to the

limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the PHMP that would require the Project to reduce pH beyond what would be required by the LA for the Project shall be effective only upon modification of the TMDL to reflect the reduced load allocation.

5. ODEQ may make or require reasonable modifications to the WQMP that it considers to be reasonable and feasible if:

(a) The WQMP proves inadequate to provide the data needed to make the determinations described in certification condition 2, above; or,

(b) Modifications to the PHMP require or indicate a need for modification to the WQMP.

6. With the approval of ODEQ, the Joint Applicants may cease implementing the PHMP and WQMP or may implement a modified PHMP and WQMP. ODEQ may approve termination or modification if ODEQ determines that it will not impair the achievement of any LA for the Project for pH and will not contribute to the exceedance of the relevant pH criterion in waters affected by the Project.

7. The Joint Applicants shall implement modifications requested by ODEQ in accordance with these certification conditions and the WQMMP.

F. Nuisance Phytoplankton Growth and Aesthetic Conditions

1. The SWW facility shall be operated in accordance with the Nuisance Phytoplankton Growth Management Plan (NPGMP) contained in the WQMMP. The NPGMP shall identify those measures that the Joint Applicants will undertake to reduce the Project's contribution to exceedances of the nuisance phytoplankton growth standard criteria in the event nuisance conditions develop.

2. Upon issuance of a new FERC license for the Project, the Joint Applicants shall implement the Water Quality Monitoring Plan (WQMP) contained in the WQMMP. The WQMP shall specify the nuisance phytoplankton growth monitoring reasonably needed to determine (a) whether the nuisance phytoplankton trigger criterion is exceeded in the Project reservoirs, (b) the success of the NPGMP in reducing the Project's contribution to excessive phytoplankton levels that might lead to nuisance conditions within the Project reservoirs, and (c) any additional measures that may be needed to reduce the Project's contribution to nuisance phytoplankton conditions.

3. Upon the U.S. Environmental Protection Agency's final approval or adoption of a Total Maximum Daily Load (TMDL) for nuisance phytoplankton growth in the portion of the Deschutes River affected by the Project, ODEQ may reevaluate the NPGMP in light of information acquired since the certification of the Project. If additional nuisance phytoplankton growth reduction measures are technically and economically practicable and necessary to meet a Load Allocation (LA) for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL), ODEQ may require submittal of a revised NPGMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. If the TMDL does not include a specific LA for the Project, references to the "LA for the Project" shall refer to the LA that encompasses Project-related impacts to nuisance phytoplankton growth within the Project reservoirs.

4. At the end of the period determined by ODEQ to be necessary to implement the TMDL for nuisance phytoplankton growth in the portion of the Deschutes River affected by the Project, ODEQ may:

(a) Determine whether the LA for the Project has been achieved.

(b) If the LA for the Project has been achieved, the Joint Applicants shall continue to implement the NPGMP unless, at the Joint Applicants' request, ODEQ approves a modification or termination of the NPGMP.

(c) If the LA for the Project has not been achieved, ODEQ may reevaluate the NPGMP to determine whether additional measures to reduce the Project's contribution to exceedances of the nuisance phytoplankton growth criteria are technically and economically practicable and necessary. If additional measures are technically and economically practicable and necessary, ODEQ may require submittal of a revised NPGMP that ensures attainment of the LA, subject to the limits set forth in Chapter 1.0 of Exhibit A and incorporated into the WQMMP. Any modification of the NPGMP that would require the Project to reduce nuisance phytoplankton growth beyond what would be required by the LA for the Project shall be effective only upon modification of the LA to reflect the reduced load allocation.

5. ODEQ may make or require reasonable modifications to the WQMP that it considers to be reasonable and feasible if:

(a) The WQMP proves inadequate to provide the data needed to make the determinations described in certification condition 2, above; or,

(b) Modifications to the NPGMP require or indicate a need for modification to the WQMP.

6. With the approval of ODEQ, the Joint Applicants may cease implementing the NPGMP and WQMP or may implement a modified NPGMP and WQMP. ODEQ may approve termination or modification if ODEQ determines that it will not impair the achievement of any LA for the Project for nuisance phytoplankton growth and will not contribute to the exceedance of the relevant nuisance phytoplankton growth criteria in the Project reservoirs.

7. The Joint Applicants shall implement modifications requested by ODEQ in accordance with these certification conditions and the WQMMP.

G. Biological Criteria, Deleterious Conditions, and Protection of Designated Beneficial Uses of Salmonid Spawning, Salmonid Rearing, Resident Fish, Aquatic Life, and Wildlife, and other water quality-related state laws for the protection of fish, aquatic life and wildlife:

1. **SWW Facility:** The Joint Applicants shall operate the Selective Water Withdrawal (SWW) facility in accordance with conditions C, D, and E of this certification.

2. **Monitoring:** Upon issuance of a new FERC license for the Project, the Joint Applicants shall conduct all monitoring, record keeping, and reporting of all parameters in accordance with the WQMP contained in the WQMMP. The WQMP shall specify monitoring sufficient to determine compliance with § 401 certification requirements for water quality, Project operations, streamflow, ramping rates, and reservoir levels.

3. **Spill Management:** The Joint Applicants shall maintain and implement current Spill Prevention, Control, and Countermeasure (SPCC) plans for oil arid hazardous materials prepared in accordance with the Clean Water Act requirements of 40 CFR 112. These plans shall address all locations at the Project where Project operations may potentially result in a spill of these materials to the reservoirs or the lower

Deschutes River. In the event of a spill or release or threatened spill or release to Project reservoirs or the lower Deschutes River, the Joint Applicants shall immediately implement the site's SPCC plans and notify the Oregon Emergency Response System (OERS) at 1-800-452-0311.

4. **Ramping Rates in the lower Deschutes River:** The Joint Applicants shall operate the project with the following criteria for ramping rates: 0.1 foot/hour and 0.4 foot/day from October 16 to May 14, and 0.05 foot/hour and 0.2 foot/day from May 15 to October 15, except during certain extraordinary conditions. These extraordinary conditions are: (1) flood events; (2) any event that triggers the Project Emergency Action Plan; (3) rapid changes in Project inflows, when the rate of inflow change exceeds the proposed stage change limits; and (4) equipment failures or emergencies at the Reregulating Development. To monitor compliance with this requirement, the Joint Applicants shall record the time and control signal value for all state change instructions at the Reregulating Development and shall report any control signal changes that are greater than the ramping limitations identified above.

5. **Reservoir Levels:** The Joint Applicants shall operate Lake Billy Chinook to maintain a stable pool level between 1,944 ft. mean sea level (MSL) and 1,945 ft. MSL during the period June 15 to September 15 of each year. If it is forecasted that Lake Billy Chinook will not fill by June 15 of any year, then the Joint Applicants shall immediately notify the state Hydroelectric Application Review Team (HART) and advise of the expected refill date. If the reservoir has not been filled to normal operating pool level by June 15 of any year, this provision shall not prevent filling if water is available for storage while maintaining the minimum flow. Except during certain extraordinary circumstances described below, the Joint Applicants shall restrict the drawdown of Lake Billy Chinook to a maximum of 20 ft (elevation 1,925 ft MSL) with a target of 10 feet drawdown during normal winter operations; Lake Simtustus to a maximum drawdown limit of elevation of 1,576 ft MSL between June 1 and August 31, and elevation 1,573 ft MSL between September 1 and May 31; and the Reregulating Reservoir to 1,414 ft MSL year-round. Extraordinary circumstances allowing deviation from maximum allowable drawdowns are: (a) flood events in which drawdown is needed for safe passage of flood flows to minimize damage to life and property; (b) unforeseen occurrences in which drawdown is required to complete emergency repairs on Project facilities; (c) periodic scheduled maintenance activities that require drawdown to complete normal repairs on Project facilities (including spillway gates, the intake structure, or other dam structures); and (d) regional power system emergencies. In instances where the Joint Applicants exceed maximum drawdowns, the Joint Applicants shall provide immediate written justification to FERC and notification to HART describing cause and need for the deviation, extent of deviation, and expected timeline for bringing the reservoir(s) back to minimum allowable pool levels. If the pool level of Lake Billy Chinook is projected to be below the summer operating level (minimum elevation 1,944.0 ft MSL) between June 15 and September 15, the Joint Applicants may reduce the flow release to ensure the

reservoir reaches the minimum pool elevation of 1944.0 ft MSL. When inflows to the Project under this condition are less than target flows plus 150 cfs, then the flow release at the USGS Madras Gage No.14092500 shall be defined as the daily inflow less 150 cfs. The referenced target flows are defined in the next condition.

6. **Minimum Streamflows:** The Joint Applicants shall maintain minimum flows on a weekly basis equal to specified target flows or inflows, whichever is less. The target flows, as measured at the USGS Madras Gage No.14092500, are as follows: January 4,500 cfs, February 4,500 cfs, March 4,500 cfs, April 4,000 cfs, May 4,000 cfs, June 4,000 cfs, July 4,000 cfs, August 3,500 cfs, September 3,800 cfs, October 3,800 cfs, November 3,800 cfs, and December 4,500 cfs. During the period September 16 through November 15, the Joint Applicants shall supplement inflows as necessary to ensure a minimum flow release to the lower river of at least 3,000 cfs, subject to a maximum required supplementation of 200 cfs and cap on required drawdown of Lake Billy Chinook to achieve such supplementation equal to four feet.

7. **Run-of-River Operations:** The Joint Applicants shall hold river flows below the Reregulating Development to within ± 10 percent of the measured Project inflow under most conditions. Conditions or events where these criteria may not be followed include days with measured inflow in excess of 6,000 cfs when at least one of the following conditions exists: (1) any event that triggers the Project Emergency Action Plan; (2) power emergencies, as defined in the WSCC Minimum Operating Reliability Criteria (March 8, 1999); (3) equipment failures or emergencies at one of the Project dams or powerplants; or (4) reservoir drawdowns are needed for safe passage of anticipated flood flows to minimize damage to life and property. At times when flows are in excess of 6,000 cfs and one or more of the above exception conditions apply, the Joint Applicants shall minimize the variation beyond the ±10% criterion as can be done safely.

8. **Stream Gaging:** By no later than one year from the date of receiving a new FERC license for the Project, the Joint Applicants shall fund improvements at the existing USGS gaging stations on the Crooked (Gage No.14087400), Deschutes (Gage No.14076500) and Metolius (Gage No.14091500) rivers upstream of the Project. These improvements shall include radio, telephone, or other telemetry systems to provide recording and transmission of hourly stream temperature and streamflow data to the Pelton control room.

9. **Fish Passage:** The Joint Applicants shall construct, maintain and operate, or shall arrange for the construction, maintenance and operation of such facilities and equipment for fish migration, propagation or conservation consistent with the proposed Fish Passage Plan and amendments thereto. In the event any modifications in the fish

facilities are deemed necessary, the Joint Applicants shall cooperate with Oregon Department of Fish and Wildlife (ODFW) in the design of such modifications or operation of the facilities.

10. **Large Wood:** All large wood (greater than 20 cm by 3 m) entering Lake Billy Chinook shall be removed by the Joint Applicants and placed into the lower Deschutes River below the Reregulating Dam. Following a flow event that results in the transport of significant amounts of large wood into Lake Billy Chinook, the Joint Applicants shall consult with ODFW and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS) Natural Resources Department to obtain specific guidance pertaining to the placement and monitoring of that large wood in the lower Deschutes River below the Project's Reregulating Dam. The Joint Applicants shall obtain all necessary regulatory licenses, permits, or approvals from tribal, federal, state and local authorities prior to large wood placement.

11. **Sediment Transport/Spawning Gravel**: The Joint Applicants shall perform the following studies with regard to sediment transport and spawning gravel:

- Verify the sediment transport model developed by Fassnacht (1998) by placing radio-tagged and/or colored rocks on selected bars in the Deschutes River below the Reregulating Dam. Determine at which flow levels these rocks are mobilized by checking their positions after each flow event greater than 7,000 cfs. The Joint Applicants may submit to ODEQ for approval a proposal for an alternate flow value for commencement of this monitoring pending the results of the AIR process. Buried columns of colored rocks will be utilized to determine the depth of scour at different flow levels.

- Resurvey channel cross sections at five locations utilized by Fassnacht (1998). Resurvey these annually for 5 years to determine if there is any active channel change associated with years having high flow events. If no change is detected after 5 years, resurvey them every 10 years, or after events greater than 15,000 cfs.

- If monitoring sediment transport and channel change shows significant transport or change at flows lower than predicted by Fassnacht (1998), initiate a program to measure actual bedload transport at different flow levels at the Warm Springs Bridge (US Highway 26).

- If monitoring of channel change and measuring bedload shows significant transport at levels significantly below those predicted by the geomorphology study, revisit the sites used by McClure (1998) for particle size measurements and replicate these particle surveys.

- Coordinate and lead a study of historical fish counts and spawning data directed toward determination of the cause of anadromous spawning reduction in the Lower Deschutes River from below the Reregulation Dam downstream to the mouth of Shitike Creek. In addition, the Joint Applicants shall conduct a study to determine the quality of gravel habitat for anadromous fish in this river reach. The results of this study shall be used by the Joint Applicants to determine if additional mitigation measures are necessary to improve habitat quality or quantity.

12. **Upper Basin Habitat Enhancement and Restoration:** The Joint Applicants shall work with private and governmental entities in the Deschutes River Basin to implement cost-effective habitat enhancement and restoration measures to improve the quality of water flowing into the Project. These upper basin measures shall include, but not be limited to, the creation of riparian refugia, as well as improvements such as livestock exclusion, placement of large woody debris, planting of grass, shrubs, trees, and the maintenance and creation of wetlands.

The Joint Applicants shall expend a minimum of $1.475 million for these upper basin measures over the first 5 years of the new license in accordance with the following table.

Required Mitigation Measure	**Minimum Required Expenditure**
Improved Riparian Corridor Management	$750,000
Community Habitat Education Activities	$25,000
Establishment of Reserves and Refugia	$700,000
Total	$1,475,000

H. Total Dissolved Gas

1. The Joint Applicants shall monitor total dissolved gas at the Reregulating Dam tailrace in accordance with the WQMP contained in the WQMMP.

2. If monitoring of total dissolved gas at the Reregulating Dam tailrace at times of spill indicates noncompliance with the total dissolved gas standard, then the Joint Applicants shall immediately develop a plan and schedule for assessing the problem and developing a remedy. Such plan and schedule shall be submitted to ODEQ for

approval within 60 days of identifying the excessive total dissolved gas concentrations via monitoring. Upon approval of the remedial plan by ODEQ, the Joint Applicants shall implement the plan in accordance with the approved schedule.

I. Turbidity

1. The Joint Applicants shall implement the erosion control measures for erosionally-sensitive shoreline areas of the Project reservoirs as proposed in the Final Joint Application Amendment, Exhibit E-VII-13.

2. The Joint Applicants shall continue the Shoreline Planting Program at all three Project reservoirs to enhance on-site riparian habitat, as proposed in the Final Joint Application Amendment, Exhibit E-IV-41.

3. The Joint Applicants shall monitor turbidity in accordance with the WQMP contained in the WQMMP.

J. Toxic Substances; Discoloration, Scum, Oily Sleek; Aesthetic Conditions; Deleterious Conditions

The Joint Applicants shall maintain and implement current Spill Prevention, Control, and Countermeasure (SPCC) plans for oil, hazardous materials, and non-hazardous materials prepared in accordance with the Clean Water Act requirements of 40 CFR 112. These plans shall address all locations at the Project where Project operations may potentially result in a spill of these materials to the reservoirs or the lower Deschutes River. In the event of a spill or release or threatened spill or release to Project reservoirs or the lower Deschutes River, the Joint Applicants shall immediately implement the site's SPCC plan and notify the Oregon Emergency Response System (OERS) at 1-800-452-0311.

K. Bacteria

The Joint Applicants shall monitor for E. coli bacteria in accordance with the WQMP contained in the WQMMP.

L. Cooling Water Discharge Permits

Upon issuance of a new FERC license for the Project, the Joint Applicants shall within 30 days request and file National Pollutant Discharge Elimination System (NPDES) permit applications with ODEQ for cooling water discharges at each of the three powerhouses. This condition will be considered null and void if the Joint Applicants, prior to FERC license issuance, have applied to ODEQ for these NPDES permits.

M. § 401 Certification Compliance Schedules

If any event occurs that is beyond the Joint Applicants' reasonable control and that causes or may cause a delay or deviation in compliance with schedules contained in this § 401 Certification, the Joint Applicants shall immediately notify ODEQ in writing of the cause of delay or deviation and its anticipated duration; the measures that have been or will be taken to prevent or minimize the delay or deviation; and the timetable by which the Joint Applicants propose to carry out such measures. It is the Joint Applicants' responsibility in the written notification to demonstrate to ODEQ's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of the Joint Applicants. If the Joint Applicants so demonstrates, ODEQ shall extend times of performance of related activities under this condition, as appropriate. Circumstances or events beyond the Joint Applicants' control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or war. ODEQ may also consider other circumstances or events as beyond the Joint Applicants' control. These other circumstances or events may include, but not be limited to, changes in state statutes; delays in the receipt of necessary approvals for construction design or permits; or delays that ODEQ agrees the Joint Applicants would not have been expected to anticipate. These other circumstances or events will only be considered if they are not due to the actions or inactions of the Joint Applicant. Increased cost of performance or consultant's failure to provide timely reports may not be considered circumstances beyond the Joint Applicants' control.

N. § 401 Certification Modification

ODEQ, in accordance with OAR Chapter 340, Division 48, and, as applicable, 33 USC 1341, may modify this Certification to add, delete, or alter Certification conditions as necessary and feasible to address:

(a) adverse or potentially adverse Project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;

(b) TMDLs (not specifically addressed above in these Certification Conditions);

(c) changes in water quality standards;

(d) any failure of Certification conditions to protect water quality or designated beneficial uses as expected when the Certification was issued; or

(e) any change in the Project or its operations that was not contemplated by this Certification that might adversely affect water quality or designated beneficial uses.

O. Project Changes

The Joint Applicants shall obtain ODEQ review and approval before undertaking any change to the Project that might significantly affect water quality (other than project changes required by or considered in this Certification), including changes to Project structures, operations, and flows.

P. Project Repair or Maintenance

The Joint Applicants shall obtain ODEQ review and approval before undertaking Project repair or maintenance activities that might significantly affect water quality (other than repair or maintenance activities required by or considered in this Certification). ODEQ may, at the Joint Applicants' request, approve specified repair and maintenance activities on a periodic or ongoing basis.

Q. Project Inspection

The Joint Applicants shall allow ODEQ such access as necessary to inspect the Project area and Project records required by this Certification at reasonable times as necessary to monitor compliance with § 401-certification conditions.

R. Posting of § 401 Certification

The Joint Applicants shall post a copy of these certification conditions in a prominent location at the Pelton Powerhouse Control Center.

S. Water Quality Standards Compliance

Notwithstanding the conditions of this certification, no wastes shall be discharged and no activities shall be conducted which will violate state water quality standards.

T. Project Specific Fees

In accordance with Oregon Revised Statutes (ORS) 543.080, the Joint Applicants shall pay a project-specific fee for ODEQ's costs of overseeing implementation of adaptive management provisions of this § 401 certification. The fee shall be $25,000 (2002 dollars) annually, made payable to "State of Oregon, Department of Environmental Quality", and due on July 1 of each year after issuance of the new FERC license. This fee will not pay ODEQ's costs of participation, before or after issuance of the new FERC license, on the Fisheries Technical Subcommittee established by the Joint Applicants for the Project; such costs shall be paid by Joint Applicants by arrangement separate from this Certification condition. ODEQ shall credit against the fee amounts required under this Certification condition any fee or other compensation paid or payable

to ODEQ, directly or through other agencies of the State of Oregon, during the preceding year (July 1 to June 30) for ODEQ's cost of oversight of adaptive management. The fee shall expire 10 years after the first July 1 following issuance of this certification, unless terminated earlier by ODEQ because oversight of adaptive management is no longer necessary. One year before the tenth-anniversary expiration of the fee, or earlier if mutually agreed, ODEQ and the Joint Applicants shall review the need, if any, to modify, extend, or terminate the fee, in accordance with ORS 543.080. The Joint Applicants shall continue to pay any project-specific fee required after such review.

APPENDIX B

The Water Control Board
Confederated Tribes of the Warm
Springs Reservation of Oregon

Section 401 of the Clean Water Act
Terms and Conditions

1. Protection of beneficial uses of anadromous fish passage, salmonid spawning, salmonid rearing, and resident fish and aquatic life

Upon FERC's issuance of a new license for the Project, the Joint Applicants shall comply with the following provisions related the Biological Criteria water quality standard and other appropriate requirements of Tribal law:

A. Habitat Improvement Projects

The Joint Applicants will work with private and governmental entities in the Deschutes River Basin to implement cost-effective habitat enhancement and restoration measures to improve the quality of water flowing into, through or below the Project. These measures will include, but not be limited to, the creation of riparian refugia, as well as improvements such as livestock exclusion, placement of large woody debris, planting of grass, shrubs, trees, and the maintenance and creation of wetlands. The Joint Applicants will expend a minimum of $1.415 million for these measures over the first 5 years of the new license.

Proposed Mitigation Measure	Proposed Expenditure
Improved Riparian Corridor Management	$750,000
Community Habitat Education Activities	$25,000
Establishment of Reserves and Refugia	$700,000
Total	$1,475,000

B. Long-Term Water Quality Monitoring and Adaptive Management

The selective water withdrawal facility, to be built as a means to address water quality and fish passage issues, may adversely affect specific water quality parameters such as turbidity and pH. Therefore, the WCB requires a comprehensive water quality monitoring and management plan be implemented to monitor physical, chemical, and biological parameters. Implementation of this plan along with adaptive management will allow rigorous evaluation of progress towards achieving defined measures of success; and utilization of gained knowledge to make necessary modifications through time.

Knowledge gained from the water quality monitoring and management plan will receive broad review from resource managers and the public leading to informed decisions by an Implementation Oversight Committee representing the WCB, DEQ, and the Joint Applicants. The Implementation Oversight Committee will be involved in the administration of the Water Quality Management and Monitoring Plan attached hereto as Appendix A[74] and the adaptive management provisions of this Certification.

The Tribal Council of the Confederated Tribes of Warm Springs has delegated the responsibility and accountability to implement the Policy Statements listed in Tribal Ordinance 80 and 81 to the Water Control Board. Therefore the WCB will be responsible for all decisions requiring the exercise of delegated authority from the Federal Environmental Protection Agency under the Federal Clean Water Act and for implementing Tribal Ordinances 45, 80 and 81.

In the WCB's view the biological criteria also includes consideration of the Project's ongoing impacts on the lower Deschutes River in terms of increased recreational use of the reservoirs, increased development along reservoir shorelines, interception of large woody materials, interception of gravel and finer materials, flow modification (instream flows, ramping rates, and attenuation of flood peaks), disconnection of populations for resident fish species, and prevention of anadromy. This document addresses each of these factors insofar as they affect the support of designated beneficial uses as specified by the Tribes in the Reservoirs and the lower Deschutes River. Designated beneficial uses most sensitive to the above-listed impacts include anadromous fish passage, salmonid rearing, salmonid spawning, and resident fish and aquatic life.

The WCB therefore requires the Joint Applicants to implement a long-term monitoring program to address water quality, water quantity, biological parameters and environmental factors related to resource management objectives in the tribal waters affected by the Project. This monitoring program will provide the data necessary to assess whether the Project attains and maintains compliance with the appropriate water quality standards. The information gathered in this program will also be used in the adaptive management of project operations to meet Tribal water quality standards.

The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

[74] The revised Water Quality Management and Monitoring Plan (WQMMP) has been completed by the licensees and can be found in Appendix C of this license.

C. Large Wood

The WCB requires all large wood naturally entering the Reservoirs of the Project to be collected and reintroduced below the Project. Mitigation projects to reintroduce large wood back into the lower Deschutes River will be coordinated with all appropriate agencies and approved by the Implementation Oversight Committee. Projects to replace large wood in the lower river will include addition of large wood to the waters in the way of installed structures along the banks to provide for habitat diversity, streambank stability and enhancement of the environment. In addition, some large wood reintroduction projects could be coordinated with normal high flow events to allow the large wood to find its' own "home" in the lower river.

Based on the fact that there is a lack of the "ideal quality" of large wood naturally entering the Project due to riparian management activities in the upper watershed, the WCB recommends use of proposed habitat improvement mitigation funds to supplement the large wood naturally entering the reservoirs. Typically this material would be anchored or placed along shorelines or riverbanks to add stability and habitat quality. All applicable licenses, permits and clearances for mitigation or monitoring projects will be obtained prior to any activity taking place in Tribal Waters.

D. Gravel

The reservoirs act as a settling basin not only for gravel-sized sediment but also for finer sand and silt. This may have some adverse effects to the fisheries habitat in the lower river from the Reregulating Dam to the mouth of Shitike Creek. The level of anadromous fish spawning in this area has been documented as being lower over the last 20 years.

As a result, the Joint Applicants will take the following measures with regard to sediment transport and spawning gravel in the Deschutes River downstream of the Project:

1. Verify the sediment transport model developed by Fassnacht (1998) by placing radio-tagged and/or colored rocks on selected bars in the Deschutes River below the Reregulating Dam. Determine at which flow levels these rocks are mobilized by checking their positions after each major flow event. Initiate study at flows greater than 6,500 cfs. As data is collected at this flow level, adjustments can be made to the flow level event that would trigger future data collection needs. Buried columns of colored rocks may be utilized to determine the depth of scour at different flow levels.

2. Resurvey channel cross sections at five locations utilized by Fassnacht (1998). Resurvey these annually for 5 years to determine if there is any active channel change associated with years having high flow events. If no change is detected after 5 years, re-survey them every 5 years, or after events greater than 15,000 cfs.

3. If monitoring sediment transport and channel change shows significant transport and/or changes at flows lower than predicted by Fassnacht (1998), initiate a program to measure actual bed load transport at different flow levels at the Warm Springs bridge.

4. If monitoring of channel change and measuring bedload shows significant transport at low levels significantly below those predicted by the geomorphology study, revisit the sites used by McClure (1998) for particle size measurements and replicate these particle surveys.

5. Coordinate and lead a study of historical fish counts and spawning data to determine the cause of anadromous spawning reduction in the Lower Deschutes River from below the Reregulating Dam down to the mouth of Shitike Creek. In addition, the Applicants will conduct a study to determine anadromous gravel habitat quality in the Lower Deschutes River from below the Reregulating Dam down to the mouth of Shitike Creek.

The results of these studies and other appropriate information generated in the FERC re-licensing process will be used to determine if additional mitigation measures (such as gravel augmentation) are necessary to improve habitat quality. The Joint Applicants will consult with the appropriate regulatory authorities as to the results and findings of these studies.

E. Flow Modification

The WCB requires that the Reregulating Reservoir be used to redistribute upstream peaking flows and maintain nearly steady discharge into the Deschutes River, approximately equal to the daily average inflow to Lake Billy Chinook. Project operations will closely mimic inflows (surface and groundwater) so that the project functions as a "run of the river" system under most operational conditions. There will be no more than a 10% variation between Project inflow and Project outflow under most conditions.

SAFETY

Project inflows above 6,000 cfs will be used as a trigger value whereby the project operators will:

1. Evaluate if the Project Emergency Action Plan needs to be implemented.

2. Determine if a power emergency exists (as defined in the Western Systems Coordinating Council Minimum Operating Reliability Criteria (WSCC 1999)).

3. Determine if equipment failures or emergencies exist at one of the Project dams or power plants.

4. Determine reservoir drawdown needs for safe passage of anticipated floods to minimize damage to life and property.

If any of these steps warrant a change to the outflow policy of being within plus or minus 10% of inflow, the Joint Applicants may take whatever steps are necessary to minimize impacts to the Project while protecting public health and safety. Overall direction is to minimize changes to inflow so as to provide the lower river a more normal flow regime.

NORMAL OPERATIONS

These operational requirements will allow for higher peak flows to occur in the Lower River allowing for more natural channel maintenance processes. The Joint Applicants will implement the following:

1. Institute real time flow monitoring at each of the inflows to provide hourly records of flow. This will be required to ensure compliance with the "run of the river" mandate.

2. Institute real time flow monitoring at the Madras Gauge that will offer better control of flows and a significant enhancement in accurate monitoring of actual stream flows in the lower Deschutes River. This system will enable the Project to operate as "run of the river" and comply with other operational guidelines.

3. Project operations will closely mimic inflows (surface and groundwater) so that the Project functions as a "run of the river" system under most operational conditions. There will be no more than a 10% variation between Project inflow and Project outflow under most conditions. These changes will allow for higher peak flows to occur in the Lower River allowing for more natural channel maintenance processes.

4. The WCB requires that the Q80 flows for the full period of record for the Madras Gauge (1925-1999) be used as the target "minimum flow" to be released from the project to the Lower Deschutes River. In the event inflows to the Project are lower than the target "minimum flow" then inflow volumes must be released to the Lower Deschutes River. The required "minimum flow" may be reduced up to 150 cfs to ensure the refilling of Lake Billy Chinook to reach its normal minimum summer operational level of 1944 feet. The recommended target Q80 "minimum flows" are summarized below by month.

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1924-1999 Q80	3512	4049	4225	4263	4267	4571	4170	3721	3686	3540	3446	3431

5. Seasonal operation of Lake Billy Chinook to allow for no more than a 10 foot draw down during normal winter months with an absolute maximum drawdown of 20 feet. Lake Billy Chinook should be filled and at normal operation level of 1944 feet by 1st of April. However, if this is not possible, the reservoir must be at normal operation level of 1944 feet by June 15. The "minimum" level required to be maintained at 1944 feet from June 15 to September 15, for Lake Billy Chinook. During the fall months Lake Billy Chinook should be maintained at the 1944 feet operation level so as to provide continued protection of riparian vegetation and cultural resources.

6. Seasonal operation of Lake Simtustus to allow for a minimum elevation of 1,576 feet from June 1 to August 31 and 1,573 feet elevation from September 1 to May 31.

7. Seasonal operation of the Reregulating Reservoir to allow for a minimum elevation of 1,414 feet year round.

8. Limits on river stage changes below the Reregulating Development will be as follows:

a. From May 15 to October 15, hourly stage control limit will be 0.05 feet with a daily stage change control limit of 0.2 feet.

b. From October 16 to May 14, hourly stage control limit will be 0.1 feet with a daily stage change control limit of 0.4 feet. Only during extraordinary or emergency situations can the Joint Applicants deviate from these stage change limits.

F. Fish Passage

The WCB requires the Joint Applicants implement mitigation measures that will effectively enable fish passage and allow for re-connection of harvestable fish populations and anadromy. The WCB requires that these measures do not adversely impact the thriving populations of resident fish species in the Project Reservoirs and the healthy populations of anadromous and resident fish species in the lower Deschutes River.

The Joint Applicants are proposing the construction of a selective water withdrawal facility at Round Butte Dam to address the effects of the Project on water quality and also as a means to enable fish passage. The Joint Applicants have modeled the facility's impacts on water quality and have provided enough information to show that the water quality effects of the project can be mitigated. Fish passage issues are being studied and results may not be known for many years. If the selective water withdrawal facility on Round Butte Dam will not adequately address fish passage, the Joint Applicants still have the responsibility to implement mitigation measures that will effectively enable fish passage and allow for re-connection of fish populations and anadromy within a reasonable period of time not to exceed 10 years from issuance of FERC license. If current modeling of volitional passage has not been successfully completed after 10 years, alternative methods of re-connecting the fish populations will be developed and approved by the managing agencies having regulatory authority for fisheries in the Deschutes River and the Joint Applicants, and implemented by year 15 of the new license. The Joint Applicants may request that these time frames be adjusted by the WCB after due consultation with appropriate agencies.

The Joint Applicants will continue existing fisheries mitigation programs and evaluation of fish passage projects until the fish passage issue has been resolved.

The WCB is reasonably assured that the discussed biological criteria standard as applied to fish passage will be met with implementation of mitigation measures outlined above and with the implementation of the Water Quality Monitoring Plan and Management Plan. The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

2. Dissolved Oxygen Conditions

The Joint Applicants shall comply with the following provisions related to dissolved oxygen levels in the lower Deschutes River.

The WCB requires additional data be collected at appropriate locations to determine the correlation of the Intergravel Dissolved Oxygen (IGDO) and ambient Dissolved Oxygen (DO) for a period of 3 years following issuance of this Certificate. Until the correlation between IGDO and DO has been established and it supports a change in the applicable DO Standard, the WCB will use of the ambient DO levels (11 mg/l) as the appropriate standard. The methodology to be used in monitoring IGDO will be approved by the WCB prior to any activity taking place.

The Joint Applicants will begin construction of selective water withdrawal facilities at the Round Butte Dam within 3 years of FERC license being issued and operational to meet water quality standards by end of year five. The Joint Applicants may petition the WCB to adjust these timeframes as appropriate.

Joint Applicants will implement a combination of selective water withdrawal and operational changes to keep the river immediately below the Project within range of the relevant water quality criteria for dissolved oxygen.

The WCB is reasonably assured that the discussed dissolved oxygen criteria will be met with implementation of mitigation measures outlined above and with the implementation of a Water Quality Monitoring and Management Plan. The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

3. Temperature Management Conditions

Upon FERC's issuance of a new license for the Project, the Joint Applicants shall comply with the following provisions related to water temperatures in the Deschutes River Basin:

- Joint Applicants will begin construction of selective water withdrawal facilities at the Round Butte Dam within 3 years of FERC license being issued and operational to meet water quality standards by end of year five. The Joint Applicants may petition the WCB to adjust these timeframes as appropriate.

- Implementation of the Water Quality Monitoring and Management Plan and the Implementation Management Plan will continue to help ensure that project operations do not violate the temperature criteria.

    1. Upon the U.S. Environmental Protection Agency's (EPA's) final approval or adoption of a Total Maximum Daily Load (TMDL) for temperature in the portion of the Tribal waters affected by the Project, the WCB :

        (a) Will seek, in conjunction with designated management agencies and in accordance with applicable law, other anthropogenic sources within the Deschutes River Basin to implement measures to reduce their contribution to exceedances of the temperature criteria; and

        (b) May reevaluate the Water Quality Monitoring and Management Plan in light of information acquired since the certification of the Project and in light of the temperature modification measures sought to be implemented by other sources in the basin, whether or not such implementation is underway or completed for all other sources. If additional temperature improvement measures are feasible and necessary to meet a load allocation (LA) for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL), the WCB may require submittal of a revised temperature management plan that insures attainment of the LA, subject to limits set forth in the Water Quality Monitoring and Management Plan. The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

    2. At the end of the period determined by WCB to be necessary to implement the TMDL for temperature in the portion of the Tribal waters affected by the Project, the WCB may:

        (a) Determine whether the TMDL and LA for the Project have been achieved.

(b) If the TMDL and LA for the Project have been achieved, the Joint Applicants shall continue to implement the Temperature Management Plan (TMP) unless, at the Joint Applicant's request, the WCB approves a modification of the Water Quality Monitoring and Management Plan.

(c) If the TMDL or LA for the Project has not been achieved, the WCB may require submittal of a revised temperature management plan that insures attainment of the LA, subject to limits set forth in the Water Quality Monitoring and Management Plan. The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

3. Any Project-related in stream temperature increase of 0.25 ºF, or less above the relevant criterion shall not be deemed to contribute to an exceedance of the temperature criterion or to a violation of the temperature water quality standard.

4. pH (hydrogen ion concentration)

Upon FERC's issuance of a new license for the Project, the Joint Applicants shall comply with the following provisions related to pH in the Deschutes River:

The Joint Applicants will implement the construction and operation of the selective water withdrawal facilities. Modeling results have indicated that discharges from the Reregulating Dam will continue to meet the pH criterion, with the possible exception of minor, brief, arid isolated instances during the summer months. The exceedances that are predicted are within the error of the model, and the model predictions themselves are conservative in that they are at the upper end of the error range.

Conditions in Lake Billy Chinook will improve and will meet the relevant pH criterion where the associated beneficial uses occur or are expected to occur. Any increases that occur within Lake Simtustus will be minor and will not cause a failure to comply with water quality standards in that reservoir. Moreover, Lake Billy Chinook and Lake Simtustus will continue to fall within the exemption from the pH standard. Specifically, the reservoirs existed as of January 1, 1996, and the exceedance of the pH standard occurs as a result of the impoundment in response to primary productivity

supported by nutrients that arise from sources not associated with the impoundment. With the implementation of selective water withdrawal, the Joint Applicants will have taken all practicable measures to bring pH in the impounded waters into compliance with the criterion.

The WCB is reasonably assured that the discussed pH criteria will be met with implementation of mitigation measures outlined above and with the implementation of the Water Quality Monitoring and Management Plan. The Draft Water Quality Monitoring and Management Plan (Appendix A) will be finalized (including a Quality Assurance and Quality Control Plan) within one year of the date of this Certificate being signed. The Joint Applicants may ask for an extension to this timeframe if this plan cannot be completed due to circumstances beyond their control.

(a) Upon EPA's final approval or adoption of a TMDL for pH in the Deschutes River, the WCB will determine whether the Project needs to provide additional measures to achieve an LA for the Project under the TMDL (either as a component of the initial TMDL or any subsequent modification of the TMDL). If the TMDL does not include a specific LA for the Project, references to the "LA for the Project" shall refer to the LA that encompasses Project contributions to pH exceedances in the Deschutes River below the Project or within the Projects' reservoirs. The determination shall be based on data provided through the Water Quality Monitoring Plan and other relevant information and on an analysis of the extent to which measures employed by or required of other sources within the Deschutes River Basin will result in achievement of the TMDL.

(b) If the TMDL or LA for pH has not been achieved, the WCB may require submittal of a revised pH management plan that insures attainment of the LA, subject to limits set forth in the Water Quality Monitoring and Management Plan attached to this § 401 Certification as Exhibit A.

(c) The WCB may approve cessation or modification of components of the Water Quality Monitoring Plan if the WCB determines that it will not impair the achievement of any pH TMDL or LA for the Project and will not contribute to the exceedance of the pH criterion in waters affected by the Project. Among other circumstances, the WCB may approve a request for termination of pH monitoring if the Deschutes River does not show pH exceedances for at least three consecutive years.

5. <u>Nuisance Phytoplankton Growth</u>

Although the nuisance phytoplankton standard is exceeded in the surface waters of Lake Billy Chinook and Lake Simtustus, the WCB believes that this condition is not adversely affecting any beneficial use of either impoundment, and that the condition is due to elevated inputs of nutrients from tributaries.

There are no technically and economically practicable strategies to control this condition in the Project itself, although the implementation of selective water withdrawal may tend to reduce measured chlorophyll *a* levels. However, due to unknown effects of the selective withdrawal facility on the chlorophyll *a* levels, the WCB recommends that a reference value for current conditions be established (average chlorophyll *a* levels taken for a period of 5 years). This value will be compared against annual measurements of chlorophyll *a*. If the reference value is exceeded by more than 10% in any given sample, a replication or verification sample will be collected and analyzed within 30 days. If this verification sample also exceeds the reference value by 10%, a survey of water users will be conducted to determine the level of nuisance within the next 30 days.

The WCB is reasonably assured that the discussed nuisance phytoplankton criteria will be met with implementation of mitigation measures outlined above and with the implementation of the Water Quality Monitoring and Management Plan described in Exhibit A. The WCB however does require the Joint Applicants to conduct a survey of users of Project Reservoirs based on criteria listed above to ensure that beneficial uses are not being adversely impacted by nuisance phytoplankton.

6. Total Dissolved Gas

The WCB is reasonably assured that the total dissolved gas standard will be met without special requirements. The WCB will require implementation of the Water Quality Monitoring and Management Plan for DO and Total Dissolved Gas to ensure compliance with this standard.

7. Antidegradation Policy

With the implementation of the mitigation measures listed above, the WCB believes that overall water quality in and below the Project will be improved. As noted earlier, the modeled shift in temperature back toward pre-Project conditions will cause an increase over existing conditions during the first half of the year; but as this represents a reversal of a Project impact, this does not constitute a violation of the antidegradation policy. Current modeling results indicate that DO levels will improve throughout the year. The pH levels in the lower Deschutes River may increase slightly for brief periods of time, but these increases, if they occur, are not predicted to have any adverse impact on water quality or on compliance with other standards, particularly the biological criteria standard. As shown by the recently completed modeling of the lower river, the overall impact on water quality will be beneficial. Accordingly, the WCB believes that there will be a reasonable assurance that Project operations, coupled with the mitigation measures listed above, will comply with the Tribal antidegradation policies. The WCB will require implementation of the Water Quality Monitoring and Management Plan to ensure compliance with the antidegradation policy.

8. Naturally-Occurring Conditions

There are a number of issues related to natural conditions that need to be understood and recognized.

(a) Water temperatures are in excess of the current bull trout standard upstream of Lake Billy Chinook in the upper Deschutes River, Crooked River, and Metolius River sub-basins. It is evident that temperatures in the streams of the Deschutes River Basin naturally exceed the temperature standard set for bull trout. Groundwater entering the Crooked River at Opal Springs runs at an average temperature of 53ºF (11.67ºC) year round according to the Tribal Water Quality Monitoring Program. In the late summer and fall months, groundwater provides the majority of the surface flows entering Lake Billy Chinook from the Crooked River and Deschutes River arms. Therefore, surface water temperatures are naturally above the standard temperature for bull trout.

The spring fed Metolius River temperatures are also in excess of the current bull trout standard during this period. The water entering Lake Billy Chinook has a hydraulic residence time of approximately 2 months, and since the tributary streams exceed 10°C for nearly this long during the summer, it is unlikely that the temperature in the reservoir could remain below 10°C. Lake Simtustus receives nearly all of its inflow from Lake Billy Chinook, so it, too, is unlikely to remain below 10°C. Therefore, stream temperatures in the lower Deschutes River are unlikely to remain below 10 ºC.

(b) Dissolved oxygen concentration in the hypolimnion of Lake Billy Chinook and Lake Simtustus follows a pattern that is typical of highly productive lakes. Biological oxidation of organic matter in the hypolimnion during the period of stratification results in depletion of oxygen. In many productive lakes, DO concentration in the hypolimnion can approach zero. In Lake Billy Chinook, however, this extreme condition is avoided because oxygen-containing water from the tributaries flows into the hypolimnion and provides a source of oxygen. In Lake Simtustus, the flow into the hypolimnion comes from the relatively well-aerated mid-depths of Lake Billy Chinook.

(c) The pattern of pH seen in the Project reservoirs and in the Deschutes River below the Project is, like the DO pattern in the reservoirs, a function of the high productivity of the water bodies. Intense photosynthetic activity results in elevated pH levels in the water. This occurs in the reservoirs, in the lower Deschutes River, and in the Deschutes and Crooked rivers above the Project. It is a consequence of the relatively high nutrient concentration in the waters of the Project, which acts to increase biological activity resulting in an increase in pH.

(d) As stated earlier, the Metolius River may be representative of the "natural" nutrient conditions of the steams flowing into the Project reservoirs. The Meltolius River is low in nitrogen and relatively high in phosphorus. The Deschutes and Crooked rivers have similar phosphorus concentrations but higher nitrogen concentrations, suggesting that they are being artificially enriched in nitrogen. The resulting high nutrient concentrations support the profuse algal production, which results in the patterns of DO and pH seen in the Project reservoirs and in the lower Deschutes River. Dense algal blooms would occur even in the absence of nitrogen enrichment because species of cyanobacteria (blue-green algae) present in Lake Billy Chinook are capable of meeting their nitrogen needs from the atmosphere in the presence of sufficient phosphorus. It is unlikely that phosphorus input could be reduced sufficiently to limit the growth of phytoplankton because of the naturally high concentration in inflowing streams.

(e) The current conditions regarding stream flow entering the Project Area may be deemed to be naturally occurring in that the Project does not regulate legal water rights obtained under State Law nor does the Project generate or create additional water above what nature delivers within the context of the entire Deschutes Basin. Given the current appropriations and their individual supporting water right certificate with corresponding priority date, the WCB is convinced that the most effective, equitable and efficient way to increase stream flow below the project is to work within the legal framework to increase flows entering the Project area. This could include use of market based incentives, land acquisitions, water right transfers and other legal methods to secure more water.

(f) Increases in surface stream flow entering the Project due to mitigation measures in the upper basin may increase temperature regimes in the reservoirs and ultimately the Lower Deschutes.

(g) The stability of the Lower Deschutes River is attributable to significant ground water sources within and immediately above the Project area. The lower Deschutes River flows are dominated by groundwater contributions in the late summer and fall months. Diurnal fluctuations are small immediately below the Project mainly due to constant groundwater contributions and present Project Operations. Although both the Deschutes and Crooked Rivers are highly managed in the upper basin, water quality within the Project is moderated to a great extent by the excellent quality and quantity of groundwater entering within the vicinity of the Project.

The WCB believes that naturally-occurring temperatures and nutrient levels may be adversely and indirectly affecting water quality within and downstream of the Project. The WCB has taken these facts into account in making their findings.

9. Spill and Waste Management

The Joint Applicants shall implement its Project-specific Oil Spill Prevention, Control and Countermeasure (SPCC) Plan and Waste Management Guidelines. The SPCC Plan and Waste Management Guidelines shall be kept current. In the event of a spill or release or threatened spill or release to Tribal waters, Joint Applicants shall immediately implement the site's SPCC plan, modified SPCC plan or other applicable contingency plan and notify the Oregon Emergency Response System (OERS) at 1-800-452-0311, Tribal Fire & Safety Office at (541) 553-1634, and the Natural Resources Department at (541) 553-2001.

10. § 401 Certification Modification

Subject to the provisions of Ordinance 80 and 81, the WCB may reconsider and add or alter conditions to the §401 Certification as necessary to address changes in conditions or knowledge or to address any failure of conditions herein to protect water quality and beneficial uses. In accordance with the Clean Water Act §401, any added or altered condition shall, so long as it is in effect, become a condition of any federal license or permit that is thereafter issued for the Project. Ordinance 81 provides a mechanism for appropriate changes to the conditions established in this §401 Certificate. With respect to an existing federal license or permit for the Project, the WCB may petition the federal agency to incorporate the added or altered condition in the federal license or permit.

11. Project Changes

The Joint Applicants must obtain the WCB review and approval before undertaking any change to the Project that might significantly affect water quality, including changes to Project operation and flows.

12. Project Repair or Maintenance

The Joint Applicants must obtain the WCB review and approval before undertaking Project repair or maintenance activities that might significantly affect water quality. The WCB may, at Joint Applicants' request, provide prior approval of such repair and maintenance activities on a periodic or ongoing basis.

13. Costs for TEO and WCB Oversight

In accordance with Tribal Ordinances 80 and 81, Joint Applicants shall pay a project-specific fee for the WCB and the TEO's costs of overseeing implementation of this §401 Certification. The fee shall be $24,000 annually (2002 dollars indexed to the Federal Inflation Rate) made payable to "Tribal Environmental Office, Natural Resource Department" and due on July I of each year after issuance of this Certificate. If this fee

amount is found to be in excess of needs or inadequate to cover costs incurred, the Water Control Board may change the annual fee charged after consultation with the Joint Applicants.

14. Project Inspection

The Joint Applicants shall allow the WCB and TEO or other designated representative such access as necessary to inspect the Project area at reasonable times to monitor compliance with certification conditions.

15. Notification

The Joint Applicants will notify the WCB and the TEO of any future changes in the project or operation of the project.

16. Posting of Certification

A copy of this certification shall be prominently posted within the project powerhouse.

The Joint Applicants have provided reasonable assurances that the Project will be managed and operated in a manner that win not violate applicable tribal water quality standards. The Water Control Board as the delegated authority of Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon is reasonably assured that compliance with the certification conditions contained herein will maintain the Project consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Clean Water Act, Tribal water quality standards, and other appropriate requirements of Tribal law related to water quality. No additional special requirements, aside from those already listed above, are needed to meet the requirements of the Tribal Water Code.

APPENDIX C

U.S. Fish and Wildlife Service
Section 18 Fishway Prescriptions

The fishway prescriptions are identical to Proposed Articles 17-33 and 38 of Exhibit A of the Settlement Agreement. For ease of reference, we include the numbering system used in the Settlement Agreement.

1. Fish Passage Plan (Proposed Article 17)

The Licensees shall implement the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)], including but not limited to the measures described in paragraphs (a) through (d) of this article.

(a) The Licensees shall implement the Fish Passage Plan to establish self-sustaining harvestable anadromous fish runs of Chinook, steelhead and sockeye above the Project. The anadromous fish that are reintroduced shall pose acceptable minimal risks of fish disease agent introduction. The target population sizes to be used for self-sustaining harvestable runs of each species will be those developed by the Oregon Department of Fish and Wildlife (ODFW) and Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR), in conjunction with the Licensees and the Fish Committee, based on historic information, modeling, habitat production capacity estimates, and research results.

(b) The Licensees shall provide for safe, timely and effective upstream and downstream fish passage of adult and juvenile life stages of spring and fall Chinook, summer steelhead, sockeye salmon, bull trout, rainbow trout, and mountain whitefish.

(c) The Licensees shall implement a three-phase fish passage program, including sequential step-by-step implementation with clearly stated targets, accomplishments, consultation, and prerequisite requirements for each phase. The three phases are Experimental, Interim, and Final.

(i) The Experimental Passage Phase is the current stage of fish passage at the Project and includes but is not limited to modeling of currents in and water withdrawal from Lake Billy Chinook, conceptual designs for downstream passage facilities at Round Butte Dam, Pelton Fish Trap improvements, juvenile migration studies in Lake Billy Chinook, fish health monitoring, approval of the Fish Health Management program and stock selection of species.

(ii) The Interim Passage Phase shall include investigations of fish passage methods and construction of selective water withdrawal (SWW) facilities and temporary and permanent downstream passage facilities at Round Butte Dam. Actions and adaptive management studies for this phase shall include but are not limited to:

(1) Evaluation of the Round Butte Dam SWW system;

(2) Hydraulic and biological evaluation of the Round Butte Dam temporary and permanent downstream collection and fish handling facilities;

(3) Biological evaluation of the adult fish release facility;

(4) Modification and reactivation of the Pelton Dam historical downstream migrant facility;

(5) Conducting predation studies in Lake Billy Chinook; and

(6) Conducting fish health monitoring and evaluation.

(iii) The Final Passage Phase shall include actions and adaptive management studies for feasibility determination, development and construction of permanent upstream fish passage facilities, contingent on the achievement of successful downstream passage at the Project. These actions and studies shall include:

(1) Reactivation and evaluation of the Pelton Fish Ladder for volitional upstream fish passage;

(2) Construction of new ponds or facilities to rear juvenile spring Chinook or construction of a new ladder to retain or replace existing spring Chinook rearing capacity;

(3) Construction of a new fish ladder, or other volitional upstream fish passage facility, at Round Butte Dam; and

(4) Continued monitoring of the success, and improvement if necessary, of fish passage for all species.

(d) The Licensees shall conduct effectiveness monitoring, annual work plans, and a phased approach that includes:

(i) A specific schedule of timelines, including Testing and Verification studies, study results, and decisions;

(ii) Analysis of self-sustaining harvestable anadromous fish runs with the use of life cycle models and evaluation of passage efficiencies and survival estimates for the different life history stages of each species;

(iii) Establishment of performance measures and monitoring success towards achieving performance measures;

(iv) Evaluation of spawning and rearing and movement of re-introduced fish species;

(v) Evaluation of movement of native resident fish species upstream and downstream through Project facilities and reservoirs;

(vi) Trap and haul of adult fish subject to the long-term goal of volitional upstream fish passage, which will eventually require construction, evaluation, and monitoring of upstream collection facilities, if determined to be feasible;

(vii) During initial implementation, capturing and marking out migrating smolts from above the Project so that they may be differentiated from other returning adults in subsequent years;

(viii) Continued reservoir and drogue studies to refine operations and implementation of structural changes that will assist juvenile migration through Lake Billy Chinook;

(ix) Annual evaluation of stock performance success via outmigrant escapement and adult returns, including periodic evaluation and validation of the model results to determine the efficacy of the passage program;

(x) Preparation of design specifications for fish passage facilities in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities; and

(xi) Fish passage standards and monitoring, evaluation and reporting requirements.

2. <u>Fish Passage Criteria and Goals (Proposed Article 18)</u>

(a) The Licensees shall provide that upstream and downstream passage facilities will be functional during all months of the year to provide safe, timely and effective passage for resident and anadromous fish.

(b) The following table summarizes the criteria and goals for safe, timely and effective downstream and upstream passage for fish.

Criteria And Goals For Safe, Timely And Effective Downstream And Upstream Passage	
Item	**Criteria and Goals**
1. Screen Hydraulic Criteria	NOAA Fisheries smolt criteria (as provided in Article 22)
2. Downstream Passage Facility Survival (from Round Butte collection to lower Deschutes River release point)	93 percent smolt survival for temporary facility during first five years of operations. 96 percent smolt survival for permanent facility.
3. Upstream Passage Facility Survival (from lower Deschutes River collection point through Adult Release Facility)	95 percent during first five years of operations. 98 percent after five years.
4. Round Butte Reservoir Downstream Passage Associated with Temporary Passage Facilities	>50 percent of a statistically significant sample of tagged steelhead or spring Chinook outmigrants from any Project tributary averaged over four years of study.
5. Round Butte Reservoir Downstream Passage Associated with Permanent Collection Facilities	>75 percent survival of PIT-tagged smolts calculated as a rolling 4-year average during the first 12 years.

3. Fish Passage Schedule (Proposed Article 19)

The Licensees shall implement the comprehensive schedule for design, construction, operations and monitoring of upstream and downstream passage facilities included in the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)].

4. Phased Construction of Selective Water Withdrawal and Downstream Fish Passage Facilities (Proposed Article 20)

(a) The Licensees shall prepare, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, and file with the Commission a design and schedule to construct the selective water withdrawal and downstream passage facilities in the following two phases in accordance with the approved schedule: (1) construction of the selective water withdrawal structure, which shall include a temporary downstream passage facility and (2) construction of the permanent downstream passage facility. The temporary and permanent facilities shall both include a sampling area to support biological evaluation of the fish screens and fish bypass facilities, and a mechanical screen cleaner or some other suitable device to prevent the accumulation of sediment and debris that might otherwise impair screen function and cause the delay, injury, or mortality of downstream migrating fish at Round Butte Dam. Upon Commission approval, the Licensees shall construct the selective water withdrawal ("SWW") and downstream passage facilities.

(b) The Licensees shall install and operate a permanent downstream fishway that meets National Marine Fisheries Service smolt criteria within the forebay at the Round Butte Dam, including fish screens, guidance devices, and fish bypass facilities as described in the Fish Passage Plan. The Licensees shall construct permanent downstream passage facilities after determining, in consultation with the Fish Committee, Oregon Department of Environmental Quality, and CTWS Water Control Board, that the blend of surface/deep water withdrawal through the selective water withdrawal facility will: (a) satisfy the criteria for safe, timely and effective downstream passage associated with temporary passage facilities set forth in Article 18; and (b) currently meet water quality criteria set forth in the 401 certificates, or likely meet the water quality criteria within a reasonable time through continued iterative adjustments of the SWW system as constructed with permanent downstream passage facilities and/or through implementation of other water quality management strategies. The Licensees shall evaluate downstream movement as described in the Fish Passage Plan.

(c) The Licensees shall notify the Fish Committee in writing when the downstream fishways are fully operational. Operation, maintenance, and monitoring of downstream fishways shall be conducted in accordance with the Downstream Fishway Operation and Maintenance Plan and Downstream Fishway Monitoring Plan, which the Licensees shall file with the Commission after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon Commission approval and coincident with the initiation of downstream fishway operations, the Licensees shall begin implementation of the plans.

5. <u>Downstream Passage Facilities At Round Butte Dam (Proposed Article 21)</u>

The Licensees shall submit for the review by the Fish Committee, and for approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the results of all downstream fishway design investigations, preliminary design plans and specifications, and final design plans and specifications for the construction and operation of temporary and permanent downstream fishways at Round Butte Dam to meet National Marine Fisheries Service smolt criteria. To the extent not otherwise completed as Interim Measures as described in Exhibit B to the Settlement Agreement and reported to the Commission pursuant to Article 41, the Licensees shall complete the following modeling and design steps prior to the construction of the selective water withdrawal (SWW) facilities and the downstream fish passage facilities:

(a) ***Constructability and Feasibility*****:** Constructability/feasibility design is the first step needed to select a design option and facility location.

(b) ***Design Consultation*****:** After the constructability/feasibility design is complete and a preferred option is selected, the Licensees shall consult with the Fish Committee, Oregon Department of Environmental Quality, and the Confederated Tribes of the Warm Springs Water Control Board prior to starting detailed design.

(c) ***Modeling*****:** If the constructability/feasibility studies do not result in a clear cut recommended design selection, then computational fluid dynamics (CFD) modeling may be used to provide additional input into the selection.

(d) ***Design selection*****:** If the CFD modeling is not required to make the design selection, CFD modeling and the progression to the 25% design stage will be conducted concurrently. The CFD modeling results will be used to optimize facility geometry and to review design features to provide the best attraction currents in the forebay and around the facility.

(e) ***Physical Model*****:** After the 25% design stage and the CFD modeling have been completed, the results will be used to construct a physical model of the structure. The primary purpose of the physical modeling is to investigate the internal hydraulics of the structure and to evaluate entrance hydraulic conditions. Concurrently, the design will progress to the 50% stage.

(f) ***Design Consultation and Review*****:** After the physical modeling is complete and the design has progressed to 50%, consultation with the Fish Committee (and with the Commission for dam safety purposes) will be undertaken prior to proceeding with further design.

(g) ***Final Consultation*****:** After consultation is complete, the design will progress to 90%, and then to final status. The Licensees shall file the final design with the Commission after consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon Commission approval, the Licensees shall construct the SWW and temporary downstream passage facilities.

6. Criteria for Downstream Passage Screen Design (Proposed Article 22)

(a) The downstream passage facilities at Round Butte Dam shall meet the National Marine Fisheries Service (NOAA Fisheries) smolt criteria; however, the facilities' exclusion plates do not have to meet the NOAA Fisheries criteria for sweeping velocity and contact time.

(b) The smolt criteria include, but are not limited to, a maximum approach velocity perpendicular to the screens and exclusion plate of 0.80 feet per second (fps), screen openings no larger than 0.25 inches, a screen sweeping velocity component no less than 0.80 fps, and a screen contact time no greater than 60 seconds. Due to the size of the structure and the experimental nature of safely attracting and capturing juvenile migrants from Lake Billy Chinook, some components of the fish screen and bypass system may require flexibility to design and construct to NOAA Fisheries smolt criteria, and the Licensees shall design the fish screening and collection facilities in consultation with the Fish Committee based on the best available scientific information.

(c) The Licensees shall design screening facilities to screen less than 14,000 cfs only if water quality modeling verifies that flows above 9,000 cfs can be routed through the deep intake without impact to the Project's ability to meet water quality standards and without detrimental impact to the flow pattern and fish attraction in Lake Billy Chinook.

7. Round Butte Deep Exclusion Screen (Proposed Article 23)

(a) The Licensees shall design the Round Butte deep exclusion screen to meet National Marine Fisheries Service (NOAA Fisheries) smolt criteria except for the criteria for sweeping velocity and contact time. In addition, outmigrant collection facilities will not be required at the deep exclusion screen. The Licensees shall evaluate hydraulic performance as soon as possible after the deep exclusion screen has been installed. If the screen does not meet applicable NOAA Fisheries smolt criteria at full hydraulic capacity, the Licensees shall take any necessary measures to meet applicable NOAA Fisheries smolt criteria. The Licensees shall continuously monitor differential pressure though the deep exclusion screen while the lower withdrawal system is in operation.

(b) The Licensees shall conduct studies of fish impingement at the Round Butte deep exclusion screen. Monitoring will be conducted during the first year after installation of the deep exclusion screen when deepwater withdrawal has been initiated, and when deepwater withdrawal is maximized. The duration of monitoring will depend on the monitoring method selected, but must be for a period sufficient for evaluating the possibility of impingement.

(c) The Licensees shall monitor the hydrodynamic and biological effects of Project operations during the first season after installation of permanent screens for the Round Butte downstream fish passage facility, and at least once every five years thereafter. The Licensees shall, in consultation with the Fish Committee, evaluate the need for additional monitoring based on the previous monitoring data.

(d) If the monitoring indicates that there is impingement of fish at the Round Butte deep exclusion screen, the Licensees shall consult with the Fish Committee to determine if impingement is significant because it impedes the Licensees' ability to achieve the objectives for Interim and Permanent Downstream Passage. If the Fish Committee determines that the effects are significant, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective authorities, take any feasible measures or implement modifications within their control that are necessary to reduce impingement below the level of significance. These measures include but are not limited to operations modifications, cleaning system modifications, louver adjustments, and deterrent systems such as strobe lights or sound to keep fish away from the exclusion screening. The Licensees shall re-evaluate the facility the next time deepwater withdrawal has been initiated or maximized. If there are no feasible structural or operational measures within the Licensees' control that will reduce impingement below significant levels, the Licensees shall, in consultation with the Fish Committee, investigate and implement alternative mitigation measures.

8. Downstream Passage Facility Pumped Attraction (Proposed Article 24)

The Licensees shall design the permanent downstream collection facility at Round Butte Dam to include the ability to add pumps with a total capacity of 3,000 cfs and all appurtenant devices. The Licensees shall, before construction of the permanent downstream collection facility, prepare and provide the Fish Committee a report on the need to add pumped attraction flow. The report shall be based on information gathered during the Testing and Verification studies pursuant to Article 29 and prepared in consultation with the Fish Committee. If the Fish Agencies conclude that it is necessary to add pumped attraction flow, the Licensees shall, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, develop a plan to design, construct, and operate pumps to provide appropriate attraction flow to the permanent downstream collection facilities. Upon approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall submit the plan to the Commission for approval. Upon Commission approval, the Licensees shall implement the plan.

9. Trap and Haul Facilities (Proposed Article 25)

(a) The Licensees shall provide upstream passage using trap and haul until volitional upstream passage is implemented pursuant to provisions of the Fish Passage Plan.

(b) The Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a final monitoring plan for the operation and maintenance of trap-and-haul fishways at the Pelton Round Butte Project. The plan shall

provide for the submission of an annual monitoring report to the Fish Committee for the duration of the operation of the interim trap-and-haul fishways. Upon Commission approval, the Licensees shall implement the plan.

(c) The Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan for conducting tests of upstream passage facility survival using standard methodology for evaluation of direct injury and mortality, and other factors. The plan shall provide that, in consultation with the Fish Committee the Licensees shall take any feasible measures or implement modifications within their control that are necessary to meet the 95 percent survival standard during the first five years of operations, and the 98 percent survival standard after five years. This survival standard applies to collection at the Pelton Trap, transportation to the adult release facility, and release through the adult release facility. After correcting any deficiencies, the Licensees shall re-test the facilities to ensure compliance with the applicable upstream passage facility survival standard. After compliance with the upstream passage facility survival standard is verified, additional re-testing will only be required if deficiencies are observed. The plan will identify the methods of observation used to detect deficiencies through long-term monitoring. Upon Commission approval, the Licensees shall implement the plan.

10. Adult Release Facility (Proposed Article 26)

(a) ***Design and Construction of Adult Release Facility*****.** The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission preliminary design, final design, and construction plans for an Adult Release Facility at the Round Butte forebay. Upon Commission approval, the Licensees shall implement the plans.

(b) ***Operation of Adult Release Facility*****.** The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission an operation and maintenance plan for the Adult Release Facility for the safe, timely and effective upstream passage of anadromous fish when Lake Billy Chinook is thermally stratified. Upon Commission approval, the Licensees shall implement the plan.

(c) ***Monitoring and Evaluation of Adult Release Facility*****.** The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission a monitoring and evaluation plan for the Adult Release Facility. Upon Commission approval, the Licensees shall implement the plan.

(d) ***Modifications to Adult Release Facility.*** The Licensees shall prepare and provide the Fish Committee reports in accordance with the monitoring and evaluation plan for the Adult Release Facility. The reports shall be based on monitoring of the Adult Release Facility, shall describe any possible need to modify the Adult Release Facility, and shall be prepared in consultation with the Fish Committee. If the Fish Agencies conclude that the Adult Release Facility must be modified to ensure safe, timely, and effective upstream passage, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop a plan to modify the Adult Release Facility to ensure safe, timely, and effective upstream passage, which plan may include, but need not be limited to, measures or modifications required to meet the survival standard applicable to collection at the Pelton Fish Trap, transportation to the Adult Release Facility, and release through this facility into Lake Billy Chinook. Upon approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall submit the plan to the Commission for approval. Upon Commission approval, the Licensees shall implement the plan.

11. Volitional Upstream Passage (Proposed Article 27)

(a) Following the installation of the permanent downstream passage facilities at Round Butte Dam and within 24 months of when the downstream survival targets in the Fish Passage Plan for Lake Billy Chinook have been achieved, the Licensees shall conduct a study and provide the Fish Committee a report on the feasibility of volitional upstream passage. The scope of the feasibility study shall be determined in consultation with the Fish Committee. Factors to be addressed in the study, shall include, but not be limited to:

(i) Engineering feasibility;

(ii) Biological effectiveness, including but not limited to risk of disease transfer and stray rate for out-of-basin fish;

(iii) Cost;

(iv) Performance, including efficiency, of the existing trap-and-haul operation.

(b) Following submission of this report to the Fish Committee, the Licensees shall prepare a plan to implement volitional upstream passage at the Project, which plan shall include appropriate testing and verification studies, unless the appropriate Fish Agencies determine pursuant to their respective statutory authorities that volitional upstream passage facilities should not be installed because:

(i) Oregon Department of Fish and Wildlife (ODFW) and Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR) have determined that the risk of disease transfer is too great,

(ii) The stray rate for out of basin fish is not acceptable,

(iii) Volitional upstream passage is infeasible, as determined utilizing the results of the feasibility study, or

(iv) It is preferable, due to concerns with the state of the art for volitional upstream passage facilities combined with high efficacy of trap and haul operations, to continue the trap-and-haul operation for some additional specified period of time.

The plan shall be completed within 24 months of the Fish Agencies' determination that volitional upstream passage should proceed, and shall be prepared in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon approval by the Fish Agencies, the Licensees shall file the plan with the Commission. Upon Commission approval, the Licensees shall implement the plan.

(c) Upon any determination pursuant to paragraph (b) that volitional upstream passage should not be installed for the reasons specified in paragraph (b), the Licensees shall, within six months of such determination, and in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to continue trap-and-haul operations for a specified number of years and to conduct a future feasibility investigation as provided in paragraph (a). During any such continued trap-and-haul operation, the Licensees shall continue to monitor survival as required by Article 25 and shall take any feasible measures or implement modifications within their control to the trap-and-haul facilities that are necessary to comply with the survival standard in Article 25. Upon Commission approval, the Licensees shall implement the plan.

12. <u>Passage at Pelton Dam (Proposed Article 28)</u>

(a) The Licensees shall transport all juvenile salmonids captured at the Round Butte downstream passage facility during the primary emigration period (February 1 through July 31) to the lower Deschutes River, bypassing Lake Simtustus and the Reregulating Reservoir. During the remainder of the year (August 1 through January 31), the Licensees shall, at the request of the Fish Committee, transport downstream-migrating salmonids into Lake Simtustus to utilize the lentic habitat it provides.

(b) If downstream-migrating salmonids are transported into Lake Simtustus, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to upgrade the Round Butte Dam east side upstream fish trap at the head of Lake Simtustus, and operate it annually for part or all of the period May 1 through September 30 to capture and transport maturing adult resident salmonids upstream for release into Lake Billy Chinook. Upon Commission approval, the Licensees shall implement the plan.

(c) If downstream-migrating salmonids are transported into Lake Simtustus, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to install a guidance net system at the Pelton Dam and shall operate the Pelton downstream passage facility (Pelton Skimmer) during part or all of the primary migration season (February 1 through July 31) to transport downstream migrants to the lower Deschutes River. Upon Commission approval, the Licensees shall implement the plan.

13. <u>Testing and Verification Studies (Proposed Article 29)</u>

(a) The Licensees shall, within one year of license issuance, file with the Commission a schedule for the development of plans for Testing and Verification studies as described in this Article and in Appendix III of the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)]. The Licensees shall develop the schedule in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities.

(b) Upon Commission approval of the schedule, the Licensees shall develop the Testing and Verification study plans in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. The study plans shall provide that the Licensees shall conduct these studies with continued involvement of the Fish Committee through the annual work planning and reporting process. Each study plan will include objectives, tasks and evaluation/decision criteria. Where appropriate, study plans will be designed to evaluate the effectiveness of individual fish passage facilities in achieving the criteria and goals set forth in Articles 18 and 22. Such effectiveness evaluations shall include, at a minimum, the number of fish, by species and life stage, captured and released by the facility and a record of observations on the physical condition of the fish using the facility fishways. The Licensees shall develop Test and Verification study plans for the following study areas:

(i) Facility Evaluation;

(ii) Physical Reservoir Changes with Selective Water Withdrawal;

(iii) Juvenile Salmonid Studies – Reintroduction of Anadromous Stocks Upstream of the Project;

(iv) Juvenile Salmonid Studies – Rearing, Juvenile Densities, Habitat;

(v) Juvenile Salmonid Studies – Juvenile Migration;

(vi) Juvenile Salmonid Studies – Reservoir Survival/Predation, Fishery, Disease;

(vii) Juvenile Salmonid Studies – Round Butte Dam Juvenile Collection, Downstream Transportation and Release;

(viii) Adult Salmonid Studies – Adult Upstream Trap-and-Haul and Adult Release Facility; and

(ix) Adult Salmonid Studies – Adult Migration/Survival/Spawning.

Study plans for multi-year studies shall provide that the Licensees may implement minor modifications to the study methodology in consultation with the Fish Committee. The need for any such minor modifications to the study methodology will be described in the annual progress report and will be based on the results of the study to date. Following approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall file the study plans with the Commission. Upon Commission approval, the Licensees shall implement the plans.

(c) Based on results of the individual Testing and Verification studies, the Licensees shall, after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file plans with the Commission for making any modifications to the facilities needed to ensure safe, timely and effective fish passage. Upon Commission approval, the Licensees shall implement the plans.

14. Modification of Downstream Facilities (Proposed Article 30)

The Licensees shall, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, develop plans for measures or modifications to the existing facilities needed to achieve the criteria and goals for safe, timely and effective fish passage set forth in Articles 18 and 22. The Licensees shall file such plans with the Commission and upon approval implement the measures or modifications.

15. Long-Term Monitoring of Downstream Collection Facilities (Proposed Article 31)

Within one year after activating the permanent downstream collection facilities at Round Butte Dam, the Licensees shall file with the Commission, after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, a plan for a long-term program to monitor downstream fish passage performance, as described in Appendix IV of the approved Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)]. The plan shall provide that the Licensees shall begin the long-term monitoring of the downstream passage facilities as soon as practicable after the Testing and Verification studies have demonstrated that the permanent downstream collection facilities are meeting the survival criteria and goals set forth in Article 18. Upon Commission approval, the Licensees shall implement the plan.

16. Annual Work Plans and Reports (Proposed Article 32)

(a) The Licensees shall utilize annual work plans to document actions to be implemented, develop monitoring and evaluation studies, and propose management, monitoring and evaluation strategies for the coming year consistent with the Fish Passage Plan. The annual work plans shall include separate study plans for each Testing and Verification study being conducted. The Licensees shall issue a draft annual work plan to the Fish Committee for review by no later than January 1, and based on consultation with the Fish Committee shall issue to the Fish Committee a final annual work plan by April 1.

(b) The Licensees shall also file an annual report with the Commission before June 1 of each year, documenting the activities of the previous year. The annual report will follow the format of the previously approved annual work plan. The annual report will include, but not be limited to:

(i) Numbers of fish by species moved upstream and downstream.

(ii) Upstream and downstream passage survival rates.

(iii) Estimates of fish mortality by species associated with the fish passage facilities.

(iv) A description and evaluation of any supplementation programs.

(v) Any changes in the work plan from adaptive management recommendations to the fish passage program that might resolve problems that have been identified.

17. Fishway Maintenance (Proposed Article 33)

The Licensees shall keep all fishways in proper order and shall keep all fishway areas clear of trash, sediment, logs, debris, and other material that would hinder passage. The Licensees shall perform maintenance in sufficient time before a migratory period such that fishways can be tested and inspected and will operate effectively prior to and during the migratory periods.

18. Pacific Lamprey (Proposed Article 38)

The Licensees shall, within one year of license issuance, file with the Commission, after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, a Pacific lamprey passage evaluation and mitigation plan as described in the approved Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)]. Upon Commission approval, the Licensees shall implement the plan.

APPENDIX D

National Marine Fisheries Service
Section 18 Fishway Prescriptions

The fishway prescriptions are identical to Proposed Articles 17-33 of Exhibit A of the Settlement Agreement. For ease of reference, we include the numbering system used in the Settlement Agreement.

1. Fish Passage Plan (Article 17)

The Licensees shall implement the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)], including but not limited to the measures described in paragraphs (a) through (d) of this article.

(a) The Licensees shall implement the Fish Passage Plan to establish self-sustaining harvestable anadromous fish runs of Chinook, steelhead and sockeye above the Project. The anadromous fish that are reintroduced shall pose acceptable minimal risks of fish disease agent introduction. The target population sizes to be used for self-sustaining harvestable runs of each species will be those developed by the Oregon Department of Fish and Wildlife (ODFW) and Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR), in conjunction with the Licensees and the Fish Committee, based on historic information, modeling, habitat production capacity estimates, and research results.

(b) The Licensees shall provide for safe, timely and effective upstream and downstream fish passage of adult and juvenile life stages of spring and fall Chinook, summer steelhead, sockeye salmon, bull trout, rainbow trout, and mountain whitefish.

(c) The Licensees shall implement a three-phase fish passage program, including sequential step-by-step implementation with clearly stated targets, accomplishments, consultation, and prerequisite requirements for each phase. The three phases are Experimental, Interim, and Final.

(i) The Experimental Passage Phase is the current stage of fish passage at the Project and includes but is not limited to modeling of currents in and water withdrawal from Lake Billy Chinook, conceptual designs for downstream passage facilities at Round Butte Dam, Pelton Fish Trap improvements, juvenile migration studies in Lake Billy Chinook, fish health monitoring, approval of the Fish Health Management program and stock selection of species.

(ii) The Interim Passage Phase shall include investigations of fish passage methods and construction of selective water withdrawal (SWW) facilities and temporary and permanent downstream passage facilities at Round Butte Dam. Actions and adaptive management studies for this phase shall include but are not limited to:

(1) Evaluation of the Round Butte Dam SWW system;

(2) Hydraulic and biological evaluation of the Round Butte Dam temporary and permanent downstream collection and fish handling facilities;

(3) Biological evaluation of the adult fish release facility;

(4) Modification and reactivation of the Pelton Dam historical downstream migrant facility;

(5) Conducting predation studies in Lake Billy Chinook; and

(6) Conducting fish health monitoring and evaluation.

(iii) The Final Passage Phase shall include actions and adaptive management studies for feasibility determination, development and construction of permanent upstream fish passage facilities, contingent on the achievement of successful downstream passage at the Project. These actions and studies shall include:

(1) Reactivation and evaluation of the Pelton Fish Ladder for volitional upstream fish passage;

(2) Construction of new ponds or facilities to rear juvenile spring Chinook or construction of a new ladder to retain or replace existing spring Chinook rearing capacity;

(3) Construction of a new fish ladder, or other volitional upstream fish passage facility, at Round Butte Dam; and

(4) Continued monitoring of the success, and improvement if necessary, of fish passage for all species.

(d) The Licensees shall conduct effectiveness monitoring, annual work plans, and a phased approach that includes:

(i) A specific schedule of timelines, including Testing and Verification studies, study results, and decisions;

(ii) Analysis of self-sustaining harvestable anadromous fish runs with the use of life cycle models and evaluation of passage efficiencies and survival estimates for the different life history stages of each species;

(iii) Establishment of performance measures and monitoring success towards achieving performance measures;

(iv) Evaluation of spawning and rearing and movement of re-introduced fish species;

(v) Evaluation of movement of native resident fish species upstream and downstream through Project facilities and reservoirs;

(vi) Trap and haul of adult fish subject to the long-term goal of volitional upstream fish passage, which will eventually require construction, evaluation, and monitoring of upstream collection facilities, if determined to be feasible;

(vii) During initial implementation, capturing and marking out migrating smolts from above the Project so that they may be differentiated from other returning adults in subsequent years;

(viii) Continued reservoir and drogue studies to refine operations and implementation of structural changes that will assist juvenile migration through Lake Billy Chinook;

(ix) Annual evaluation of stock performance success via outmigrant escapement and adult returns, including periodic evaluation and validation of the model results to determine the efficacy of the passage program;

(x) Preparation of design specifications for fish passage facilities in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities; and

(xi) Fish passage standards and monitoring, evaluation and reporting requirements.

2. Fish Passage Criteria and Goals (Article 18)

(a) The Licensees shall provide that upstream and downstream passage facilities will be functional during all months of the year to provide safe, timely and effective passage for resident and anadromous fish.

(b) The following table summarizes the criteria and goals for safe, timely and effective downstream and upstream passage for fish.

Criteria And Goals For Safe, Timely And Effective Downstream And Upstream Passage	
Item	**Criteria and Goals**
1. Screen Hydraulic Criteria	NOAA Fisheries smolt criteria (as provided in Article 22)
2. Downstream Passage Facility Survival (from Round Butte collection to lower Deschutes River release point)	93 percent smolt survival for temporary facility during first five years of operations. 96 percent smolt survival for permanent facility.
3. Upstream Passage Facility Survival (from lower Deschutes River collection point through Adult Release Facility)	95 percent during first five years of operations. 98 percent after five years.
4. Round Butte Reservoir Downstream Passage Associated with Temporary Passage Facilities	>50 percent of a statistically significant sample of tagged steelhead or spring Chinook outmigrants from any Project tributary averaged over four years of study.
5. Round Butte Reservoir Downstream Passage Associated with Permanent Collection Facilities	>75 percent survival of PIT-tagged smolts calculated as a rolling 4-year average during the first 12 years.

3. Fish Passage Schedule (Proposed Article 19)

The Licensees shall implement the comprehensive schedule for design, construction, operations and monitoring of upstream and downstream passage facilities included in the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)].

4. Phased Construction of Selective Water Withdrawal and Downstream Fish Passage Facilities (Proposed Article 20)

(a) The Licensees shall prepare, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, and file with the Commission a design and schedule to construct the selective water withdrawal and downstream passage facilities in the following two phases in accordance with the approved schedule: (1) construction of the selective water withdrawal structure, which shall include a temporary downstream passage facility and (2) construction of the permanent downstream passage facility. The temporary and permanent facilities shall both include a sampling area to support biological evaluation of the fish screens and fish bypass facilities, and a mechanical screen cleaner or some other suitable device to prevent the accumulation of sediment and debris that might otherwise impair screen function and cause the delay, injury, or mortality of downstream migrating fish at Round Butte Dam. Upon Commission approval, the Licensees shall construct the selective water withdrawal ("SWW") and downstream passage facilities.

(b) The Licensees shall install and operate a permanent downstream fishway that meets National Marine Fisheries Service smolt criteria within the forebay at the Round Butte Dam, including fish screens, guidance devices, and fish bypass facilities as described in the Fish Passage Plan. The Licensees shall construct permanent downstream passage facilities after determining, in consultation with the Fish Committee, Oregon Department of Environmental Quality, and CTWS Water Control Board, that the blend of surface/deep water withdrawal through the selective water withdrawal facility will: (a) satisfy the criteria for safe, timely and effective downstream passage associated with temporary passage facilities set forth in Article 18; and (b) currently meet water quality criteria set forth in the 401 certificates, or likely meet the water quality criteria within a reasonable time through continued iterative adjustments of the SWW system as constructed with permanent downstream passage facilities and/or through implementation of other water quality management strategies. The Licensees shall evaluate downstream movement as described in the Fish Passage Plan.

(c) The Licensees shall notify the Fish Committee in writing when the downstream fishways are fully operational. Operation, maintenance, and monitoring of downstream fishways shall be conducted in accordance with the Downstream Fishway Operation and Maintenance Plan and Downstream Fishway Monitoring Plan, which the Licensees shall file with the Commission after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon Commission approval and coincident with the initiation of downstream fishway operations, the Licensees shall begin implementation of the plans.

5. Downstream Passage Facilities At Round Butte Dam (Proposed Article 21)

The Licensees shall submit for the review by the Fish Committee, and for approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the results of all downstream fishway design investigations, preliminary design plans and specifications, and final design plans and specifications for the construction and operation of temporary and permanent downstream fishways at Round Butte Dam to meet National Marine Fisheries Service smolt criteria. To the extent not otherwise completed as Interim Measures as described in Exhibit B to the Settlement Agreement and reported to the Commission pursuant to Article 41, the Licensees shall complete the following modeling and design steps prior to the construction of the selective water withdrawal (SWW) facilities and the downstream fish passage facilities:

(a) ***Constructability and Feasibility*****:** Constructability/feasibility design is the first step needed to select a design option and facility location.

(b) ***Design Consultation*****:** After the constructability/feasibility design is complete and a preferred option is selected, the Licensees shall consult with the Fish Committee, Oregon Department of Environmental Quality, and the Confederated Tribes of the Warm Springs Water Control Board prior to starting detailed design.

(c) ***Modeling*****:** If the constructability/feasibility studies do not result in a clear cut recommended design selection, then computational fluid dynamics (CFD) modeling may be used to provide additional input into the selection.

(d) ***Design selection*****:** If the CFD modeling is not required to make the design selection, CFD modeling and the progression to the 25% design stage will be conducted concurrently. The CFD modeling results will be used to optimize facility geometry and to review design features to provide the best attraction currents in the forebay and around the facility.

(e) ***Physical Model*****:** After the 25% design stage and the CFD modeling have been completed, the results will be used to construct a physical model of the structure. The primary purpose of the physical modeling is to investigate the internal hydraulics of the structure and to evaluate entrance hydraulic conditions. Concurrently, the design will progress to the 50% stage.

(f) ***Design Consultation and Review*****:** After the physical modeling is complete and the design has progressed to 50%, consultation with the Fish Committee (and with the Commission for dam safety purposes) will be undertaken prior to proceeding with further design.

(g) ***Final Consultation*****:** After consultation is complete, the design will progress to 90%, and then to final status. The Licensees shall file the final design with the Commission after consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon Commission approval, the Licensees shall construct the SWW and temporary downstream passage facilities.

6. Criteria for Downstream Passage Screen Design (Proposed Article 22)

(a) The downstream passage facilities at Round Butte Dam shall meet the National Marine Fisheries Service (NOAA Fisheries) smolt criteria; however, the facilities' exclusion plates do not have to meet the NOAA Fisheries criteria for sweeping velocity and contact time.

(b) The smolt criteria include, but are not limited to, a maximum approach velocity perpendicular to the screens and exclusion plate of 0.80 feet per second (fps), screen openings no larger than 0.25 inches, a screen sweeping velocity component no less than

0.80 fps, and a screen contact time no greater than 60 seconds. Due to the size of the structure and the experimental nature of safely attracting and capturing juvenile migrants from Lake Billy Chinook, some components of the fish screen and bypass system may require flexibility to design and construct to NOAA Fisheries smolt criteria, and the Licensees shall design the fish screening and collection facilities in consultation with the Fish Committee based on the best available scientific information.

(c) The Licensees shall design screening facilities to screen less than 14,000 cfs only if water quality modeling verifies that flows above 9,000 cfs can be routed through the deep intake without impact to the Project's ability to meet water quality standards and without detrimental impact to the flow pattern and fish attraction in Lake Billy Chinook.

7. Round Butte Deep Exclusion Screen (Proposed Article 23)

(a) The Licensees shall design the Round Butte deep exclusion screen to meet National Marine Fisheries Service (NOAA Fisheries) smolt criteria except for the criteria for sweeping velocity and contact time. In addition, outmigrant collection facilities will not be required at the deep exclusion screen. The Licensees shall evaluate hydraulic performance as soon as possible after the deep exclusion screen has been installed. If the screen does not meet applicable NOAA Fisheries smolt criteria at full hydraulic capacity, the Licensees shall take any necessary measures to meet applicable NOAA Fisheries smolt criteria. The Licensees shall continuously monitor differential pressure though the deep exclusion screen while the lower withdrawal system is in operation.

(b) The Licensees shall conduct studies of fish impingement at the Round Butte deep exclusion screen. Monitoring will be conducted during the first year after installation of the deep exclusion screen when deepwater withdrawal has been initiated, and when deepwater withdrawal is maximized. The duration of monitoring will depend on the monitoring method selected, but must be for a period sufficient for evaluating the possibility of impingement.

(c) The Licensees shall monitor the hydrodynamic and biological effects of Project operations during the first season after installation of permanent screens for the Round Butte downstream fish passage facility, and at least once every five years thereafter. The Licensees shall, in consultation with the Fish Committee, evaluate the need for additional monitoring based on the previous monitoring data.

(d) If the monitoring indicates that there is impingement of fish at the Round Butte deep exclusion screen, the Licensees shall consult with the Fish Committee to determine if impingement is significant because it impedes the Licensees' ability to achieve the objectives for Interim and Permanent Downstream Passage. If the Fish Committee determines that the effects are significant, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their

respective authorities, take any feasible measures or implement modifications within their control that are necessary to reduce impingement below the level of significance. These measures include but are not limited to operations modifications, cleaning system modifications, louver adjustments, and deterrent systems such as strobe lights or sound to keep fish away from the exclusion screening. The Licensees shall re-evaluate the facility the next time deepwater withdrawal has been initiated or maximized. If there are no feasible structural or operational measures within the Licensees' control that will reduce impingement below significant levels, the Licensees shall, in consultation with the Fish Committee, investigate and implement alternative mitigation measures.

8. Downstream Passage Facility Pumped Attraction (Proposed Article 24)

The Licensees shall design the permanent downstream collection facility at Round Butte Dam to include the ability to add pumps with a total capacity of 3,000 cfs and all appurtenant devices. The Licensees shall, before construction of the permanent downstream collection facility, prepare and provide the Fish Committee a report on the need to add pumped attraction flow. The report shall be based on information gathered during the Testing and Verification studies pursuant to Article 29 and prepared in consultation with the Fish Committee. If the Fish Agencies conclude that it is necessary to add pumped attraction flow, the Licensees shall, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, develop a plan to design, construct, and operate pumps to provide appropriate attraction flow to the permanent downstream collection facilities. Upon approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall submit the plan to the Commission for approval. Upon Commission approval, the Licensees shall implement the plan.

9. <u>Trap and Haul Facilities (Proposed Article 25)</u>

(a) The Licensees shall provide upstream passage using trap and haul until volitional upstream passage is implemented pursuant to provisions of the Fish Passage Plan.

(b) The Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a final monitoring plan for the operation and maintenance of trap-and-haul fishways at the Pelton Round Butte Project. The plan shall provide for the submission of an annual monitoring report to the Fish Committee for the duration of the operation of the interim trap-and-haul fishways. Upon Commission approval, the Licensees shall implement the plan.

(c) The Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan for conducting tests of upstream passage facility survival using standard methodology for evaluation of direct injury and mortality, and other factors. The plan shall provide that, in consultation with the Fish Committee the Licensees shall take any feasible measures or implement modifications within their control that are necessary to meet the 95 percent survival standard during the first five years of operations, and the 98 percent survival standard after five years. This survival standard applies to collection at the Pelton Trap, transportation to the adult release facility, and release through the adult release facility. After correcting any deficiencies, the Licensees shall re-test the facilities to ensure compliance with the applicable upstream passage facility survival standard. After compliance with the upstream passage facility survival standard is verified, additional re-testing will only be required if deficiencies are observed. The plan will identify the methods of observation used to detect deficiencies through long-term monitoring. Upon Commission approval, the Licensees shall implement the plan.

10. Adult Release Facility (Proposed Article 26)

(a) ***Design and Construction of Adult Release Facility***. The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission preliminary design, final design, and construction plans for an Adult Release Facility at the Round Butte forebay. Upon Commission approval, the Licensees shall implement the plans.

(b) ***Operation of Adult Release Facility*.** The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission an operation and maintenance plan for the Adult Release Facility for the safe, timely and effective upstream passage of anadromous fish when Lake Billy Chinook is thermally stratified. Upon Commission approval, the Licensees shall implement the plan.

(c) ***Monitoring and Evaluation of Adult Release Facility*.** The Licensees shall, in consultation with the Fish Committee and with approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop and file with the Commission a monitoring and evaluation plan for the Adult Release Facility. Upon Commission approval, the Licensees shall implement the plan.

(d) ***Modifications to Adult Release Facility*.** The Licensees shall prepare and provide the Fish Committee reports in accordance with the monitoring and evaluation plan for the Adult Release Facility. The reports shall be based on monitoring of the Adult Release Facility, shall describe any possible need to modify the Adult Release Facility, and shall

be prepared in consultation with the Fish Committee. If the Fish Agencies conclude that the Adult Release Facility must be modified to ensure safe, timely, and effective upstream passage, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, develop a plan to modify the Adult Release Facility to ensure safe, timely, and effective upstream passage, which plan may include, but need not be limited to, measures or modifications required to meet the survival standard applicable to collection at the Pelton Fish Trap, transportation to the Adult Release Facility, and release through this facility into Lake Billy Chinook. Upon approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall submit the plan to the Commission for approval. Upon Commission approval, the Licensees shall implement the plan.

11. Volitional Upstream Passage (Proposed Article 27)

(a) Following the installation of the permanent downstream passage facilities at Round Butte Dam and within 24 months of when the downstream survival targets in the Fish Passage Plan for Lake Billy Chinook have been achieved, the Licensees shall conduct a study and provide the Fish Committee a report on the feasibility of volitional upstream passage. The scope of the feasibility study shall be determined in consultation with the Fish Committee. Factors to be addressed in the study, shall include, but not be limited to:

(i) Engineering feasibility;

(ii) Biological effectiveness, including but not limited to risk of disease transfer and stray rate for out-of-basin fish;

(iii) Cost;

(iv) Performance, including efficiency, of the existing trap-and-haul operation.

(b) Following submission of this report to the Fish Committee, the Licensees shall prepare a plan to implement volitional upstream passage at the Project, which plan shall include appropriate testing and verification studies, unless the appropriate Fish Agencies determine pursuant to their respective statutory authorities that volitional upstream passage facilities should not be installed because:

(i) Oregon Department of Fish and Wildlife (ODFW) and Confederated Tribes of the Warm Springs Reservation Branch of Natural Resources (CTWS BNR) have determined that the risk of disease transfer is too great,

(ii) The stray rate for out of basin fish is not acceptable,

(iii) Volitional upstream passage is infeasible, as determined utilizing the results of the feasibility study, or

(iv) It is preferable, due to concerns with the state of the art for volitional upstream passage facilities combined with high efficacy of trap and haul operations, to continue the trap-and-haul operation for some additional specified period of time.

The plan shall be completed within 24 months of the Fish Agencies' determination that volitional upstream passage should proceed, and shall be prepared in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. Upon approval by the Fish Agencies, the Licensees shall file the plan with the Commission. Upon Commission approval, the Licensees shall implement the plan.

(c) Upon any determination pursuant to paragraph (b) that volitional upstream passage should not be installed for the reasons specified in paragraph (b), the Licensees shall, within six months of such determination, and in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to continue trap-and-haul operations for a specified number of years and to conduct a future feasibility investigation as provided in paragraph (a). During any such continued trap-and-haul operation, the Licensees shall continue to monitor survival as required by Article 25 and shall take any feasible measures or implement modifications within their control to the trap-and-haul facilities that are necessary to comply with the survival standard in Article 25. Upon Commission approval, the Licensees shall implement the plan.

12. <u>Passage at Pelton Dam (Proposed Article 28)</u>

(a) The Licensees shall transport all juvenile salmonids captured at the Round Butte downstream passage facility during the primary emigration period (February 1 through July 31) to the lower Deschutes River, bypassing Lake Simtustus and the Reregulating Reservoir. During the remainder of the year (August 1 through January 31), the Licensees shall, at the request of the Fish Committee, transport downstream-migrating salmonids into Lake Simtustus to utilize the lentic habitat it provides.

(b) If downstream-migrating salmonids are transported into Lake Simtustus, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to upgrade the Round Butte Dam east side upstream fish trap at the

head of Lake Simtustus, and operate it annually for part or all of the period May 1 through September 30 to capture and transport maturing adult resident salmonids upstream for release into Lake Billy Chinook. Upon Commission approval, the Licensees shall implement the plan.

(c) If downstream-migrating salmonids are transported into Lake Simtustus, the Licensees shall, in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file with the Commission a plan to install a guidance net system at the Pelton Dam and shall operate the Pelton downstream passage facility (Pelton Skimmer) during part or all of the primary migration season (February 1 through July 31) to transport downstream migrants to the lower Deschutes River. Upon Commission approval, the Licensees shall implement the plan.

13. Testing and Verification Studies (Proposed Article 29)

(a) The Licensees shall, within one year of license issuance, file with the Commission a schedule for the development of plans for Testing and Verification studies as described in this Article and in Appendix III of the Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)]. The Licensees shall develop the schedule in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities.

(b) Upon Commission approval of the schedule, the Licensees shall develop the Testing and Verification study plans in consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities. The study plans shall provide that the Licensees shall conduct these studies with continued involvement of the Fish Committee through the annual work planning and reporting process. Each study plan will include objectives, tasks and evaluation/decision criteria. Where appropriate, study plans will be designed to evaluate the effectiveness of individual fish passage facilities in achieving the criteria and goals set forth in Articles 18 and 22. Such effectiveness evaluations shall include, at a minimum, the number of fish, by species and life stage, captured and released by the facility and a record of observations on the physical condition of the fish using the facility fishways. The Licensees shall develop Test and Verification study plans for the following study areas:

(i) Facility Evaluation;

(ii) Physical Reservoir Changes with Selective Water Withdrawal;

(iii) Juvenile Salmonid Studies – Reintroduction of Anadromous Stocks Upstream of the Project;

(iv) Juvenile Salmonid Studies – Rearing, Juvenile Densities, Habitat;

(v) Juvenile Salmonid Studies – Juvenile Migration;

(vi) Juvenile Salmonid Studies – Reservoir Survival/Predation, Fishery, Disease;

(vii) Juvenile Salmonid Studies – Round Butte Dam Juvenile Collection, Downstream Transportation and Release;

(viii) Adult Salmonid Studies – Adult Upstream Trap-and-Haul and Adult Release Facility; and

(ix) Adult Salmonid Studies – Adult Migration/Survival/Spawning.

Study plans for multi-year studies shall provide that the Licensees may implement minor modifications to the study methodology in consultation with the Fish Committee. The need for any such minor modifications to the study methodology will be described in the annual progress report and will be based on the results of the study to date. Following approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, the Licensees shall file the study plans with the Commission. Upon Commission approval, the Licensees shall implement the plans.

(c) Based on results of the individual Testing and Verification studies, the Licensees shall, after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, file plans with the Commission for making any modifications to the facilities needed to ensure safe, timely and effective fish passage. Upon Commission approval, the Licensees shall implement the plans.

14. Modification of Downstream Facilities (Proposed Article 30)

The Licensees shall, in consultation with the Fish Committee and with approval by the appropriate Fish Agencies pursuant to their respective statutory authorities, develop plans for measures or modifications to the existing facilities needed to achieve the criteria and goals for safe, timely and effective fish passage set forth in Articles 18 and 22. The Licensees shall file such plans with the Commission and upon approval implement the measures or modifications.

15. Long-Term Monitoring of Downstream Collection Facilities (Proposed Article 31)

Within one year after activating the permanent downstream collection facilities at Round Butte Dam, the Licensees shall file with the Commission, after consultation with the Fish Committee and with the approval of the appropriate Fish Agencies pursuant to their respective statutory authorities, a plan for a long-term program to monitor downstream fish passage performance, as described in Appendix IV of the approved Fish Passage Plan, Exhibit D to the Settlement Agreement, approved in Ordering Paragraph [B(2)]. The plan shall provide that the Licensees shall begin the long-term monitoring of the downstream passage facilities as soon as practicable after the Testing and Verification studies have demonstrated that the permanent downstream collection facilities are meeting the survival criteria and goals set forth in Article 18. Upon Commission approval, the Licensees shall implement the plan.

16. Annual Work Plans and Reports (Proposed Article 32)

(a) The Licensees shall utilize annual work plans to document actions to be implemented, develop monitoring and evaluation studies, and propose management, monitoring and evaluation strategies for the coming year consistent with the Fish Passage Plan. The annual work plans shall include separate study plans for each Testing and Verification study being conducted. The Licensees shall issue a draft annual work plan to the Fish Committee for review by no later than January 1, and based on consultation with the Fish Committee shall issue to the Fish Committee a final annual work plan by April 1.

(b) The Licensees shall also file an annual report with the Commission before June 1 of each year, documenting the activities of the previous year. The annual report will follow the format of the previously approved annual work plan. The annual report will include, but not be limited to:

(i) Numbers of fish by species moved upstream and downstream.

(ii) Upstream and downstream passage survival rates.

(iii) Estimates of fish mortality by species associated with the fish passage facilities.

(iv) A description and evaluation of any supplementation programs.

(v) Any changes in the work plan from adaptive management recommendations to the fish passage program that might resolve problems that have been identified.

17. Fishway Maintenance (Proposed Article 33)

The Licensees shall keep all fishways in proper order and shall keep all fishway areas clear of trash, sediment, logs, debris, and other material that would hinder passage. The Licensees shall perform maintenance in sufficient time before a migratory period such that fishways can be tested and inspected and will operate effectively prior to and during the migratory periods.

APPENDIX E

National Marine Fisheries Service
Endangered Species Act
Reasonable and Prudent Measures and Terms and Conditions

Filed February 28, 2005

Reasonable and Prudent Measures (Section 9.3 of the Biological Opinion)

(1) Carry out all protection, mitigation, and enhancement measures identified in the July 13, 2004, Settlement Agreement and its attachments which avoid or minimize effects to MCR steelhead.

(2) Use the best available science to adaptively manage Project operation, maintenance, and construction activities to avoid or minimize effects to MCR steelhead during the period of the new Project license.

Terms and Conditions (Section 9.3.1 of the Biological Opinion)

(1) FERC must require the Joint Applicants to construct and operate the Project facilities identified in the July 13, 2004, Settlement Agreement; carry out the Fish Passage Plan; adhere to the Fish Passage Schedule; implement the Testing and Verification studies, Long Term Monitoring, Annual Work Plans and Reports, and Native Fish Monitoring Program; implement the Trout Creek restoration Project, LWD management plan, and gravel augmentation study; and other measures identified in the July 13, 2004, Settlement Agreement.

(2) FERC must require the Joint Applicants to establish the Fish Committee required by the July 13, 2004, Settlement Agreement, and to adhere to the consultation and dispute resolution provisions of the Settlement Agreement.

(3) FERC must require the Joint Applicants to comply with all Project construction activity best management practices (App. F, Joint Applicants 2004), including measures to prevent concrete products from entering Project waters, measures to control erosion and sedimentation, and measures to control pollutants of any kind.

APPENDIX F

U.S. Fish and Wildlife Service
Endangered Species Act
Reasonable and Prudent Measures and Terms and Conditions

Filed November 3, 2004

Reasonable and Prudent Measures (Section 7.3 of the Biological Opinion)

(1) Implement all protection, mitigation, and enhancement measures identified in the July 13, 2004, Settlement Agreement and its attachments which avoid or minimize effects to bull trout.

(2) Use the best available science to adaptively manage Project operation, maintenance, and construction activities to avoid or minimize effects to the bull trout during the period of the new Project license.

Terms and Conditions (Section 7.4 of the Biological Opinion)

1. To implement reasonable and prudent measure 1:

   1.1 The Commission must require the JA's to construct and operate the Project facilities identified in the July 13, 2004, Settlement Agreement, implement the Fish Passage Plan, adhere to the Fish Passage Schedule, implement the Testing and Verification studies, Long-Term Monitoring, Annual Work Plans and Reports, Native Fish Monitoring Program, and other measures identified in the July 13, 2004, Settlement Agreement.

2. To implement reasonable and prudent measure 2:

   2.2 The Commission must require the JA's to establish the Fish Committee required by the July 13, 2004, Settlement Agreement, and to adhere to the consultation and dispute resolution provisions of the Settlement Agreement.

   2.3 To implement reasonable and prudent measure 2, the Commission must require the JA's to comply with all Project construction activity best management practices, including measures to prevent concrete products from entering Project waters, measures to control erosion and sedimentation, and measures to control pollutants of any kind.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portland General Electric Company and Confederated Tribes of the Warm Springs Reservation of Oregon — Project No. 2030-036

(Issued June 21, 2005)

KELLIHER, Commissioner, *concurring*:

This order approves a comprehensive Settlement Agreement signed by Portland General Electric Company, the Confederated Tribes of the Warm Springs Reservation of Oregon, and 20 stakeholders in the relicensing process for the Pelton Round Butte Hydroelectric Project. The Settlement Agreement includes proposed license articles embodying the provisions of the Agreement. This order incorporates most of the Settlement Agreement's proposed license articles in the new license issued for the Pelton Round Butte Project.

I join my colleagues in approving the Settlement Agreement and the issuance of a new license for the project. I am writing separately, however, to express concern about the process for deciding whether certain proposed license articles should be incorporated in the license. In some instances, this decision appears to have been based on little more than whether the final environmental impact statement (EIS) found the underlying action to be acceptable.

An EIS is a document reflecting staff's analysis of environmental issues. It is not intended to assess whether a proposed license article should be incorporated into a license issued by the Commission. That decision should be made utilizing jurisprudential standards established by the Commission. The analysis of environmental issues in an EIS does not provide such standards or otherwise utilize them.

The issue of what provisions of settlements may be incorporated into license articles has bedeviled the Commission and the broader hydroelectric community for some time. Accordingly, I want to stress my belief that it is important that the Commission act promptly to provide guidance to parties on this important issue.

_____
Joseph T. Kelliher

EXHIBIT 5

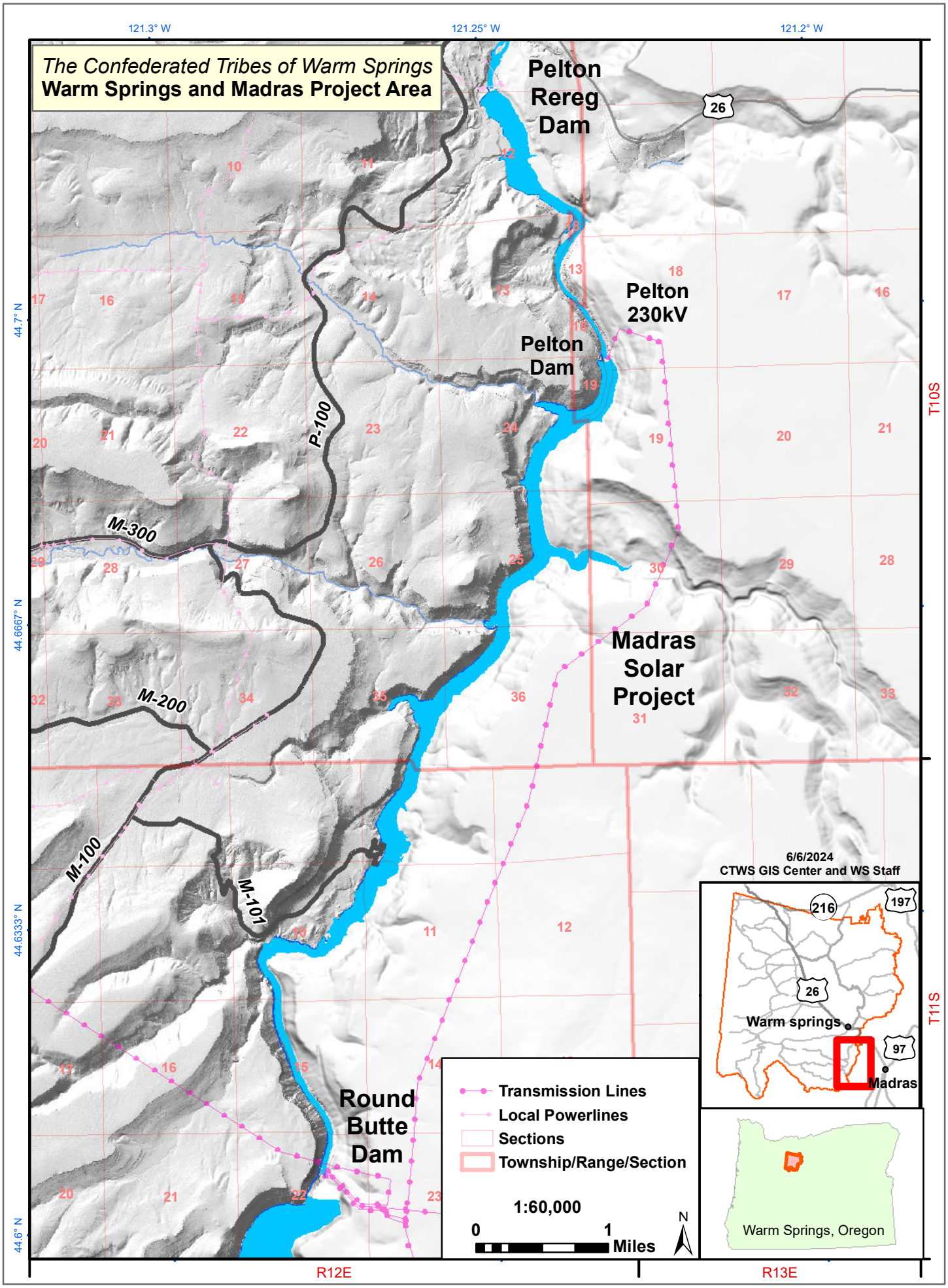

The Confederated Tribes of Warm Springs
Warm Springs and Madras Project Area
121.3° W
121.25° W
121.2° W
44.7° N
44.6667° N
44.6333° N
44.6° N
Pelton Rereg Dam
Pelton 230kV
Pelton Dam
Madras Solar Project
Round Butte Dam
P-100
M-300
M-200
M-100
M-101
26
T10S
T11S
R12E
R13E
6/6/2024
CTWS GIS Center and WS Staff
216
197
26
97
Warm springs
Madras
Transmission Lines
Local Powerlines
Sections
Township/Range/Section
1:60,000
0
1
Miles
N
Warm Springs, Oregon

EXHIBIT 6

Document Accession #: 20001124-0002 Filed Date: 11/21/2000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

Confederated Tribes of the Warm Springs Reservation of Oregon, a Federally Recognized Indian Tribe, and Warm Springs Power Enterprises, a Chartered Enterprise of the Confederated Tribes of the Warm Springs Reservation of Oregon

Docket No. ER01-53-000

ORDER DISCLAIMING JURISDICTION AND GRANTING AUTHORIZATIONS AND WAIVERS

(Issued November 21, 2000)

In this order, we disclaim jurisdiction over Warm Springs Power Enterprises (WSPE) as a public utility under Part II of the Federal Power Act (FPA) and grant requested authorizations and waivers as they pertain to Part I of the FPA.[1]

Background

The Tribes are a federally recognized Indian Tribe organized pursuant to Sections 16 and 17 of the Indian Reorganization Act of 1934.[2] They are a Federal corporation[3] which is a confederation of the Wasco, Warm Springs, and Paiute Tribes. The Tribes

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[1]Although the Confederated Tribes of Warm Springs Reservation of Oregon (Tribes) and WSPE (jointly, Petitioners) state in their application that the Tribes and WSPE will seek to engage in wholesale electric power and energy transactions as a power marketer, the Commission notes that the proposed rate schedule attached to the application only applies to WSPE.

[2]25 U.S.C. §§ 476 and 477 (1994).

[3]The Tribes were issued a federal Corporate Charter conferring federal corporate status on the Tribes.

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may create business enterprises that operate through a plan of operation adopted by the Tribes' Tribal Council.

WSPE is a Chartered Enterprise of the Tribes.[4] WSPE is the enterprise formed by the Tribes to, among other things, manage and operate the Reregulating Dam Generating Facility and to manage the Tribes' interest in Pelton/Round Butte Hydroelectric Project (Project).[5] The Warm Springs Reservation is located in North Central Oregon and comprises approximately 640,000 acres. WSPE seeks to engage in wholesale electric power and energy transactions as a power marketer.

On October 5, 2000, the Petitioners filed a joint application requesting that the Commission disclaim jurisdiction over WSPE's activities as a power marketer. In the case that the Commission finds jurisdiction, Petitioners have also filed an application to authorize WSPE to engage in wholesale power sales at market-based rates and further request the same waivers and authorizations as those granted by the Commission to other power marketers with market-based rate authorization. Petitioners request an effective date of December 4, 2000, 60 days after the date of the filing.

Irrespective of whether the Commission deems WSPE jurisdictional, Petitioners request (a) blanket approval, under Parts 20 and 34 of the Commission's Regulations, of future issuances regarding securities and assumptions of liabilities, subject to objection by an interested party; and (b) waiver of Parts 41, 101, and 141, with the exception of 18 C.F.R. §§ 141.14-141.15 (2000).

Notice of Petitioners' application was published in the Federal Register, 65 Fed. Reg. 61,320 (2000), with comments, protests and interventions due on or before October 26, 2000. None was filed.

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[4]WSPE was created pursuant to Section 12 of the Tribes' Corporate Charter, and now operates pursuant to its Fourth Amended Plan of Operation.

[5]In an order being issued contemporaneously with this order, in Project No. 2030-032, the Commission is approving a Settlement Agreement between the Tribes, Portland General Electric Corporation and the U.S. Department of Interior pursuant to which the Tribes will purchase a 33 percent undivided interest in the Project while retaining their 100 percent interest in the Reregulating Dam Generating Facility.

Discussion

For the reasons discussed below, we find that WSPE is not a public utility under Part II of the FPA.

Under FPA section 201(f), there are express exemptions from the Commission's jurisdiction under Part II of the FPA. They include, "the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing..." The issue of instrumentalities under section 201(f) was addressed in City of Paris, KY v. FPC, 399 F.2d 983 (D.C. Cir. 1968). There, the court ruled that rural electric cooperatives financed by the Rural Electrification Administration (REA) are not government instrumentalities under Section 201(f). [6] The court acknowledged that the REA exercised "considerable supervision" over the cooperatives but stated that:

> The cooperatives do not perform an inherent governmental function, nor have they become so assimilated or incorporated into government as to become one of its constituent parts. The funds advanced to the cooperatives are not spent or used on behalf of government or in the performance of any governmental function. REA-financed cooperatives are private nonprofit corporations organized for the benefit of their consumer-owners. They are neither operated nor controlled by any government, federal, state or local. They are neither operated nor controlled by the Rural Electrification Administration or any other government agency.

Id., at 986 (footnotes omitted).

The Commission previously addressed the issue of whether a tribal utility can be regulated under Part II of the FPA as a public utility in Sovereign Power Inc., 84 FERC ¶ 61, 014 (1998) (Sovereign). In Sovereign, the Commission ruled that it lacks jurisdiction over a tribal corporation owned and operated by the Spokane Tribe. The Commission emphasized the following facts: the enterprise was wholly owned by the Spokane Tribe; the Spokane Tribe performed government functions; the funds generated would be used for governmental purposes; such funds would decrease the need for federal funding; and the Spokane Tribe was subject to extensive federal oversight. The facts led the Commission to hold that the Spokane Tribe was a government instrumentality and that Sovereign Power, Inc., a corporation wholly-owned by that

[6] REA is now the Rural Utility Service (RUS).

instrumentality under section 201(f), was not a public utility for purposes of the Commission's jurisdiction.

Applying these tests to the facts before us, we conclude that the Tribes are an instrumentality of the "United States, a State or any political subdivision of a state."[7] The Tribes perform inherent government functions and the funds generated by WSPE will be used by the Tribes on the behalf of the government and in performance of government functions. The money collected by WSPE will also mean that the Tribes will need less funding from the federal government and this generally promotes the goal of encouraging tribal self-determination and economic independence.

Petitioners state that the Tribes are subject to Interior Department oversight and that the Interior Department's influence on the Tribes' actions indicate that the Tribes are, to a significant extent, linked to the federal government. The Tribes are organized pursuant to Sections 16 and 17 of the Indian Reorganization Act of 1934 (5 U.S.C. §§ 476 and 477)(1994). The majority of the Tribes' enumerated powers require the review and/or consent of the Secretary of the Interior before action may be taken. Examples of the power the federal government has over the Tribes include: approval by the Secretary of the Interior (Secretary) of the lease of Tribal lands; approval by the Secretary of the use of Tribal funds to acquire land; and approval by the Secretary of legal counsel employed to protect and advance the Tribes' rights. Furthermore, the Tribes' Constitution states that one of the Tribes' goals is to "establish and maintain, with the aid of the Federal Government, a form of home rule that shall promote the advancement and welfare of the Indians of the Warm Springs Reservation." Constitution of the By-Laws of the Tribe, Article I(a). In addition, the Tribes' Corporate Charter recognizes that the primary purpose of the Tribal government is "to provide for the proper exercise by the [Confederated] Tribe[s] of various functions heretofore performed by the Department of the Interior...." Corporate Charter, Corporate Existence, Paragraph 1. Revenues derived from hydroelectric projects provide 50 percent of the income used by the Tribe to provide essential governmental services on the Reservation.

We recognize that the Supreme Court has ruled in other contexts that Indian tribes are not instrumentalities of the government. See, e.g., Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973) (tribe's off-reservation ski resort was not "a federal instrumentality constitutionally immune from state taxes of all sorts"); United States v. Wheeler, 435 U.S. 313 (1978) (Double Jeopardy Clause does not bar successive tribal and federal prosecutions because tribe's power to punish derives from its retained sovereignty, not

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[7]The Tribes are not a "municipality" under section 3(f) of the FPA. See Mitex, Inc., 35 FERC ¶ 61,131 (1986).

from federal sovereignty delegated to tribe by Congress); see also Smart v. State Farm Insurance Co., 868 F.2d 929 (7th Cir. 1989) (tribe is not a federal instrumentality for purposes of Employment Retirement Income Security Act). However, none of those cases involved the FPA. The controlling standard under the FPA is set forth in City of Paris and, under that standard, the Tribes are a governmental instrumentality.

Since the Tribes are an instrumentality of the government, and WSPE is a Chartered Enterprise of this instrumentality under section 201(f), WSPE is not a public utility for purposes of our jurisdiction. Our decision here is based on the specific facts of this case, particularly the fact that WSPE is an enterprise of the Tribes.[8] See Enron Power Marketing, Inc. v. Pennsylvania-New Jersey-Maryland Interconnection, et al., 83 FERC 61,032 (1998).

Our conclusion is consistent with the long-standing principle of statutory construction that "statutes are to be liberally construed in favor of the Indians, with ambiguous provisions interpreted to their benefit." See Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985). Since neither FPA section 201(f) nor the legislative history of Parts II and III of the FPA make explicit reference to tribal utilities, we will construe this statutory silence in favor of Petitioners and conclude that WSPE, as an enterprise wholly owned by a governmental instrumentality, is exempt from regulation as a public utility by virtue of section 201(f).[9]

Authorizations and Waivers

Petitioners request blanket approval of issuances of securities or assumptions of liabilities pursuant to Parts 20 and 34 of the Commission's regulations, subject to objection by an interested party, and waiver of the accounting and related reporting requirements of Parts 41, 101, and 141, with the exception of 18 C.F.R. §§ 141.14-141.15 (2000). We will grant the requested authorizations and waivers as they pertain to Part I of the FPA.

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[8]It is our understanding that, as a tribal enterprise, WSPE is wholly owned by the Tribes.

[9]We note that pursuant to an order in Docket No. EC00-80-000 being issued contemporaneously with this order, the Tribes will own certain transmission facilities. We do not address here whether the Tribes are a transmitting utility for purposes of section 211 of the FPA.

The Commission orders:

(A) Petitioners' request for disclaimer of jurisdiction is hereby granted, as discussed in the body of this order;

(B) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Petitioners should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

(C) Absent a request to be heard within the period set forth in Ordering Paragraph B above, Petitioners are hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Petitioners, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(D) Petitioners' request for waiver of Parts 41, 101 and 141 of the Commission's regulations is hereby granted, as discussed in the body of this order. Licensees remain obligated to file the Form No. 80 and the Annual Conveyance Report.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

Document Content(s)

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Attachment B-2: Certificate Holder's Responses to Comments

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January 6, 2025

Chase McVeigh-Walker
Senior Siting Analyst
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Salem, OR 97301

Re: Response to WSPWE Comments on Request for Amendment 1 to Site Certificate for Madras Solar Energy Facility Site Certificate

Dear Mr. McVeigh-Walker:

Madras PV1, LLC ("Madras Solar") respectfully submits this response to the comments of the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes") dated December 5, 2024 ("Tribes' Comment Letter").

I. Introductory Summary Regarding Scope of Requested Amendment

At the outset, the Tribes' Comment Letter solely addresses matters beyond the scope of the requested amendment, which is limited to an extension of time to commence and complete construction of Madras Solar's proposed solar facility. These belated substantive comments on the original application for Site Certificate are highly prejudicial to Madras Solar, as well other stakeholders supporting its project. The Tribes were properly notified of the Site Certificate application years ago and even commented on the application during the time to do so before the Council's issuance of the Site Certificate. But the Tribes did not oppose issuance of the Site Certificate prior to its issuance. Instead, the Tribes commented as follows: "This office considers the consultation between the Project proponent and the CTWSRO to have been conducted in a meaningful way, as part of a reasonable and good faith effort to identify, evaluate, and protect historic properties and cultural resources. We appreciate the inclusion of a tribal member on the field crew for the archaeological inventory efforts."[1]

Further, the Tribes' extended discussion of Madras Solar's right to interconnect to the Pelton-Round Butte Hydropower Project's 230 kV tie line involves a matter beyond the Council's purview that Madras Solar has properly brought before the Federal Energy Regulatory Commission ("FERC")—the federal agency with authority to address the question of whether the Tribes may unilaterally withhold interconnection access to the generator tie line of a federally licensed hydropower project. As Madras Solar's Petition

[1] Final Site Certificate Order, Attachment B, Comments of Christina Nauer on behalf of Confederated Tribes of the Warm Springs Reservation of Oregon, dated January 29, 2020.

for Declaratory Order, or in the Alternative, Application for Interconnection and/or Transmission Service at FERC (the "FERC Petition") explains in detail, FERC's precedent on this point strongly suggests that FERC will find that the Tribes may not unilaterally withhold consent to interconnect in this case.[2] But that is a matter to be decided at FERC, not the Council, and indeed the very reason for the requested extension of time here is to allow for such resolution to occur at FERC before construction must commence under the Site Certificate.

Nevertheless, to ensure the record is complete for the Council's decision on Madras Solar's request for amendment of the construction dates, Madras Solar responds below and in the attached table to all substantive points raised with respect to the Site Certificate by the Tribes' Comment Letter.

II. Background Regarding Interconnection and Unexpected Necessity of FERC Petition

The Tribes' Comment Letter raises issues related to Madras Solar's interconnection agreement with Portland General Electric Company ("PGE") and Madras Solar's good faith attempts to move its solar project forward by asking FERC to take action to amend the jointly held PGE-Tribes hydropower license for the Pelton-Round Butte Hydropower Project. These issues are properly before FERC and beyond the scope of the Council's Site Certificate. However, to ensure the Council has the full background to understand the context of the need for the extension of construction dates under the Site Certificate, Madras Solar provides a detailed recitation of the facts leading up to the proceeding currently before FERC. Madras Solar has also attached a copy of the public version of its FERC Petition for the Council's reference and certain key exhibits.

The referenced dispute at FERC revolves around Madras Solar's contractual right to physically interconnect its proposed solar facility to the transmission system—just as described in the Council's Site Certificate. Madras Solar's proposed facility is a qualifying facility ("QF") under Public Utility Regulatory Policies Act of 1978 ("PURPA"), which entitles it to interconnect its facility to PGE's system and sell its electrical output to PGE.[3] As the Council is aware, Madras Solar has planned to obtain interconnection to sell its proposed facility's electric output to PGE through one of the generator tie lines of the Pelton-Round Butte Hydropower Project, specifically the Pelton-Round Butte 230 kV line. The Pelton-Round Butte Hydropower Project and the Pelton-Round Butte 230 kV line are jointly owned and jointly licensed by PGE and the Tribes under FERC's regulation of hydroelectric projects under Part I of the Federal Power Act.[4]

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[2] *See City of Tacoma v. S. Columbia Basin Irrigation Dist.*, 118 FERC ¶ 61,202, PP 33-36 (March 15, 2007) (explaining, in a similar case, that "FPA Section 6 does not provide the [licensees] with a unilateral veto over the interconnection, as they contend.").

[3] 16 U.S.C. § 824a-3 *et seq*; 18 C.F.R. § 292.303.

[4] *See generally Portland Gen. Elec. Co.*, 111 FERC ¶ 61,450 (June 21, 2005) (Relicensing Order).

Based on publicly filed documents and the Tribes' Comment Letter to this Council,[5] PGE and the Tribes' ownership and operation of the hydroelectric project and its generator tie line at issue is governed by their "Ownership and Operation Agreement" (the "O&O Agreement"), effective since January 1, 2002.[6] The O&O Agreement appoints PGE as the "operator" and "agent" for the Tribes with respect to the project,[7] and it also provides PGE with a right of access to, and control over, the entire project on behalf of both owners.[8] The current ownership allocation appears to be that the Tribes own 49.9 percent of the project assets, and PGE owns 50.1 percent.[9]

Madras Solar has been under development for over five years. The proposed solar facility is located on private land east of the Pelton-Round Butte Hydropower Project's licensed boundary. The Pelton-Round Butte 230 kV line itself runs along the opposite side of the river of the Tribes' reservation for 7.9 miles from the Pelton powerhouse to the Round Butte Substation.[10] Thus, the proposed solar facility and the hydropower project's generator tie line to which it would interconnect are not located on the Tribes' reservation.[11] Madras Solar identified the potential point of interconnection to the Pelton-Round-Butte 230 kV line at a point approximately 4.9 miles north of PGE's Round Butte Substation, for the purpose of selling the solar facility's electric output to PGE at that point.

PGE is a regulated public utility under the Federal Power Act, which means that it must offer open access to its transmission system and agree to physically interconnect the facilities of proposed generation facilities (such as Madras Solar's) to PGE's transmission system.[12] Under FERC precedent, when a transmission line (including a generator tie line such as the Pelton-Round Butte 230 kV line at issue) is jointly owned by a public utility and another owner that is not a public utility, the public utility must offer open access to its transmission system, including interconnection to the system for new

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5 Tribes' Comment Letter at 2.

6 A copy of the O&O Agreement is attached as Exhibit 2. The copy of the O&O Agreement attached hereto is a copy of the document filed by PGE in Oregon Public Utility Commission Docket No. UM 1704.

7 Exhibit 2, O&O Agreement at Art. 3.1.

8 *See* Exhibit 2, O&O Agreement at Art. 2.4(d).

9 *See* PGE's 2023 Clean Energy Plan and Integrated Resource Plan, Appendix E, p. 489, available at https://assets.ctfassets.net/416ywc1laqmd/3K90DGpYCyqQu9RoLagThu/e85d8569e4a1e9f111ad5499504e5aea/2023_CEP-IRP_Appendix_E.pdf (stating PGE owns 50.1 percent); *see also Portland Gen. Elec. Co.*, 93 FERC ¶ 61,184, at 61,606 (Nov. 21, 2000) (describing Tribes' right to exercise options to increase ownership share).

10 *Portland Gen. Elec. Co.*, 111 FERC ¶ 61,450, PP 13, 107 & n. 45, 157 (June 21, 2005) (Relicensing Order).

11 *See also* Final Site Certificate Order at 11 ("The facility site is located east of Lake Simtustus, south and west of Willow Creek, and approximately 0.5 miles from the eastern boundary of the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO).").

12 *See* Exhibit 1, Madras Solar's FERC Petition, at 16.

generation facilities.[13] This is the case even if the non-public utility objects to use of the system or previously contracted to bar access by non-owners, like Madras Solar.[14] Moreover, under the PGE-Tribes O&O Agreement, PGE acts as operator of the line. Thus, in the case of the jointly owned PGE-Tribes Pelton-Round Butte 230 kV line, Madras Solar appropriately submitted an interconnection request to the public utility designated as operator of the line—PGE—to be processed under PGE's regulated interconnection process. In that process, Madras Solar funded multiple interconnection studies performed by PGE. PGE's studies identified all interconnection and network upgrades needed to safely interconnect the solar facility. The PGE-produced studies proposed to split the Pelton-Round Butte 230 kV line and loop it through a new point of interconnection substation to be located approximately 4.9 miles north of the Round Butte Substation.[15]

Madras Solar and PGE executed a PURPA power purchase agreement and an interconnection agreement that requires the upgrades PGE proposed in the interconnection studies as discussed above. The interconnection agreement (referred to as the "Large Generator Interconnection Agreement" or the "QF-LGIA") was executed on April 8, 2021—before issuance of this Council's Site Certificate on June 25, 2021.[16] The QF-LGIA describes the proposed interconnection consistent with the description in the Site Certificate and allocates responsibilities between Madras Solar and PGE to complete the construction of the interconnection facilities and necessary network upgrades to the transmission system.[17] Again, the interconnection design in the QF-LGIA (reflected in the Site Certificate) was specifically developed by PGE acting in its capacity as the regulated public utility operating the affected transmission system and also acting in its capacity as the operator of the hydroelectric project under the PGE-Tribes O&O Agreement. In the QF-LGIA, PGE warranted that it had the authority to execute and perform under the QF-LGIA. The QF-LGIA Recitals defined PGE as the "Transmission Provider and/or Transmission Owner," and PGE executed the QF-LGIA in that capacity.[18] PGE also warranted that it had the authority to execute the QF-LGIA and perform its tasks thereunder, without mention of a unilateral veto right or the need for the Tribes to execute the QF-LGIA.[19]

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13 *See* Exhibit 1, Madras Solar's FERC Petition, at 16-21.

14 *See* Exhibit 1, Madras Solar's FERC Petition, at 16-21. The Tribes' Comment Letter appears to suggest that the Pelton-Round Butte 230 kV line is not a part of the transmission system to which the open access provisions of the Federal Power Act apply. Tribes' Comment Letter at 4-5. But Tribes' assertion on that point is both within the jurisdiction of FERC to resolve and incorrect for the reasons set forth in the FERC Petition.

15 *See* Exhibit 1, Madras Solar's FERC Petition, at 9.

16 The QF-LGIA is attached as Exhibit 3. The parties have also amended the QF-LGIA once, and the QF-LGIA First Amendment is attached as Exhibit 4.

17 *See* Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Appendix A (describing interconnection); Final Site Certificate Order at 7-8 (describing interconnection).

18 Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at p. 1.

19 *See* Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 28.1.2 ("Authority," providing: "Such Party has the right, power and authority to enter into this QF-LGIA, to become a Party hereto and to perform its obligations hereunder."); *id.* at Art. 28.1.3

All Madras Solar-owned interconnection facilities and certain PGE-owned facilities (including the point of interconnection substation) will be located on private land to which Madras Solar has acquired property interests.[20] However, based on PGE's studies, certain interconnection and network upgrade facilities are located within the licensed boundary of the Pelton-Round Butte Hydropower Project.[21] As relevant here, the lands within the existing right-of-way through which the Pelton-Round Butte 230 kV line runs, adjacent to the newly proposed point of interconnection substation, are within the license boundary and thus co-owned by the Tribes.[22]

PGE has taken the position that, prior to beginning interconnection construction, the Pelton-Round Butte Hydropower Project license must be amended to accommodate the non-project use of Madras Solar's interconnection.[23] The QF-LGIA requires Madras Solar to "reasonably cooperate" with PGE with respect to the non-project use amendment, including by: "(1) completing required environmental and cultural resources studies and reports in support of the filing; and (2) providing any information reasonably requested by Transmission Provider in connection with such filing, including, but not limited to, information necessary to address stakeholder and agency comments during the drafting and review process."[24]

After experiencing delays in coordinating with the Tribes and PGE, Madras Solar has now completed the QF-LGIA's identified environmental and cultural resources study—utilizing the Tribes' preferred consultant for cultural studies—and sent the final draft of that study to PGE for inclusion in the application for license amendment.[25] The study concludes that the proposed solar facility's interconnection project will not present significant environmental, cultural, or recreational impacts, and therefore allowing its construction within the Pelton-Round Butte Hydropower Project's license boundary does not present a conflict with the hydropower licensing requirements.[26] Madras Solar has

("No Conflict", providing: "The execution, delivery and performance of this QF-LGIA does not violate or conflict with . . . any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets."); *id.* at Art. 28.1.4 ("Consent and Approval," providing: "Such Party has sought or obtained, or, in accordance with this QF-LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this QF-LGIA, and it will provide to any Governmental Authority notice of any actions under this QF-LGIA that are required by Applicable Laws and Regulations.").

20 *See* Exhibit 1, Madras Solar's FERC Petition, at 11.

21 *Id.*

22 *Id*.

23 *See* Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 3.1 ("Because the Point of Interconnection is within the boundary of a FERC-regulated hydroelectric project (the Pelton-Round Butte Hydropower Project, FERC No. 2030, which is co-owned by Transmission Provider and the Confederated Tribes of Warm Springs), Transmission Provider will be required to file a request at FERC for approval of a non-project use of project land.").

24 Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 3.1.

25 *See* Exhibit 1, Madras Solar's FERC Petition, at 11-12.

26 *See* Exhibit 1, Madras Solar's FERC Petition, at 12.



also obtained all non-ministerial state, local, and federal permits—leaving amendment to the PGE-Tribes hydropower license as the remaining obstacle to commencement of construction.[27]

The amendment of the hydropower license to enable the use of licensed project lands or facilities consistent with an agreement one of the licensees has already executed (the QF-LGIA) should be relatively straightforward and uncontroversial. However, PGE and the Tribes have delayed, and eventually refused, Madras Solar's requests that they initiate amendment of their hydropower license. As amended, the QF-LGIA includes a milestone date of no later than December 30, 2023, by which Madras Solar and PGE agreed they intended for PGE to file the license amendment application with FERC to achieve a revised operation date in the QF-LGIA of December 31, 2025.[28] For its part, Madras Solar has engaged in extended and good faith efforts to secure the Tribes' amicable consent to amendment of the license. Over a period of approximately two years, Madras Solar has had numerous meetings with the Tribes' representatives, including Warm Springs Power and Water Enterprises, which the Tribes have explained is a wholly owned enterprise of the Tribes and was formed, in part, to manage the Tribe's interests as owner in the hydropower project.[29] Yet, Madras Solar has been unable to secure the Tribes' consent to amendment of the hydropower license.

Eventually, even though Madras Solar maintains the QF-LGIA negates the need for a separate interconnection or transmission services agreement with the Tribes, Madras Solar even sent the Tribes a formal request for interconnection and transmission services because, as a "electric utility" and a "transmitting utility" under the Sections 210 and 211 of the Federal Power Act, the Tribes are subject to such interconnection requests, even though not a fully regulated "public utility" like PGE.[30] The request asked the Tribes to explain what terms of interconnection they would require if different from the already-executed QF-LGIA with PGE.[31] But the Tribes declined to offer any terms, denied the applicable provisions of the Federal Power Act apply to them, and asserted Madras Solar possesses no right to interconnect under the QF-LGIA executed with PGE.[32]

Meanwhile, PGE again refused to move forward with the application to amend the hydropower license without the Tribes' consent—thus requiring Madras Solar to petition FERC to take action to effectuate Madras Solar's right to interconnect as described in the QF-LGIA and to amend PGE-Tribes hydropower license so construction may commence. As the FERC Petition explains at length, the interconnection policies

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27 *See* Exhibit 1, Madras Solar's FERC Petition, at 12.

28 Exhibit 4, Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023, at Appendix B. The December 30, 2023 QF-LGIA milestone specifies two conditions: (1) Madras Solar's completion of environmental and cultural studies and necessary permits, and (2) "support for the FERC application in writing from the Joint Licensee of the Pelton-Round Butte Project, the Confederated Tribes of Warm Springs." *Id.*

29 *See* Exhibit 1, Madras Solar's FERC Petition, at 13.

30 *See* Exhibit 1, Madras Solar's FERC Petition, at 13-14 & 24-35.

31 *See* Exhibit 1, Madras Solar's FERC Petition, at 14.

32 *See* Exhibit 1, Madras Solar's FERC Petition, at 14.

contained in PURPA and/or the Federal Power Act entitle Madras Solar to interconnect its facility the Pelton-Round Butte 230 kV line, and the hydropower licensees (PGE and the Tribes) may not unilaterally deny such right to interconnection.[33] Although Madras Solar requested that FERC take expedited action, the need to proceed at FERC is likely to extend the delays already experienced by at least several months.

Thus, Madras Solar asks this Council to amend the Site Certificate to include more realistically feasible dates for commencement and completion of construction, which cannot lawfully occur before FERC amends the PGE-Tribes' hydropower license to authorize the non-project use of Madras Solar's interconnection as set forth in the QF-LGIA.

III. Responsive Argument

1. Madras Solar Meets the Council's Standard for an Amendment to the Site Certificate's Construction Dates.

The Council's administrative rule, OAR 345-027-0375(2)(b), provides that the Council should amend a site certificate if "the facility complies with all laws and Council standards applicable to an original site certificate application." Madras Solar meets this standard. Nothing has changed from a legal perspective. Madras Solar is still in compliance with all applicable laws. There is one outstanding impediment to the commencement of construction—the need for amendment of PGE and the Tribes' joint hydropower license to enable the non-project use of the hydropower project's generator tie line and associated land located within the boundary of the licensed hydropower facility. Such amendment would be amendment to a license held by other parties (PGE and the Tribes), not Madras Solar.[34] Because PGE and the Tribes have refused to ask FERC to amend their hydropower license, Madras Solar has asked FERC to do so through its FERC Petition. That is a matter regarding access to interstate transmission facilities and hydropower licensing that FERC has jurisdiction to resolve, and Madras Solar's FERC Petition speaks for itself in establishing the legal basis for why Madras Solar expects FERC will take action to allow the proposed solar facility's interconnection to go forward as proposed in the Site Certificate. In any event, for purposes of OAR 345-027-0375(2)(b), Madras Solar has diligently acted to ensure compliance with all applicable laws and is not in violation of any applicable laws. Indeed, Madras Solar seeks extension here to ensure construction is not required to begin under the Site Certificate before the FERC amends the PGE-Tribes hydropower license.

The Tribes' Comment Letter seeks to reopen the Council's finding in issuing the Site Certificate that the solar project's use of 12 acres of high value farmland is justified by the site's proximity to the Pelton-Round Butte 230 kV transmission line to which it

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33 *See* Exhibit 1, Madras Solar's FERC Petition, at 15-41.

34 *See, e.g., Portland Gen Elec*., 152 FERC ¶ 62,131 (Aug. 28, 2015) (approving non-project use amendment to PGE and Tribes' Pelton-Round Butte Hydropower Project's license to modify an existing 24-slip boat dock for the Lake Simtustus RV Park and Fish Camp).

would interconnect.[35] Despite the Tribes' assertions, Madras Solar is not in violation of any laws by proposing to interconnect to the generator tie line of the hydropower project. Indeed, the Tribes' co-licensee and co-owner of that transmission line executed the QF-LGIA for the very reason that Madras Solar is entitled to interconnect at that location under federal energy law and policy, which obviates the need for a more intrusive and duplicative generator tie line from the solar facility to another location on the transmission grid. Because the Tribes have continued to withhold consent, Madras Solar has asked FERC to resolve the dispute and take action to amend the hydropower license. None of that means that Madras Solar has failed to comply with applicable laws as contemplated under OAR 345-027-0375(2)(b).

Additionally, while Madras Solar is in compliance with all applicable laws and thus meets the standard under OAR 345-027-0375(2)(b), in this case the requested extension is further warranted by the fact that the requested amendment only extends the deadlines to commence and complete construction due to unexpected delays in obtaining PGE and the Tribes' consent to amend their hydropower license.[36] As noted above, at the time of issuance of the Site Certificate on June 25, 2021, Madras Solar had already obtained an executed power purchase agreement to sell the power from Madras Solar to PGE and a separate interconnection agreement (the QF-LGIA) with PGE, which is the majority owner and the operator of Pelton-Round Butte Hydropower Project's generator tie line. The interconnection agreement obligates PGE to interconnect to the Pelton-Round Butte Hydropower Project's generator tie line just as described in the Site Certificate. Madras Solar reasonably anticipated that PGE—which is the majority owner and operator of the hydropower project and the Pelton-Round Butte transmission tie line at issue—would work with the Tribes to amend their hydropower license to enable the interconnection. Indeed, the QF-LGIA executed prior to issuance of the Site Certificate states PGE will do so.[37]

However, despite reasonable expectations at the time of issuance of the Site Certificate, PGE and the Tribes have not cooperated to timely move the interconnection forward and have instead refused to request that FERC amend their hydropower license to enable the interconnection called for in the QF-LGIA PGE signed. Due to the unforeseen impediment and delay in achieving amendment to the hydropower license, Madras Solar has been unable to commence construction. Indeed, the Tribes' current objection was unexpected because the Tribes did not object to the original Site Certificate and have only more recently withheld their affirmative consent to amendment of the hydropower license. Thus, it was reasonable to assume the Tribes' cooperation in amendment of the hydropower license would be forthcoming, or that PGE would

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35 Tribes' Comment Letter at 5.

36 Madras Solar's Request for Amendment No. 1 at 4-5.

37 Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 3.1 ("Because the Point of Interconnection is within the boundary of a FERC-regulated hydroelectric project (the Pelton-Round Butte Project, FERC No. 2030, which is co-owned by Transmission Provider and the Confederated Tribes of Warm Springs), Transmission Provider will be required to file a request at FERC for approval of a non-project use of project land.")



otherwise honor its obligations under the QF-LGIA to seek amendment of the hydropower license at FERC. The requested extension provides time to proceed before FERC to resolve this unexpected issue.

2. **The Site Certificate Is Not Preempted By the Federal Power Act.**

The Tribes "question" whether the Council's Site Certificate is preempted by the federal regulation of the PGE-Tribes' hydropower license for the Pelton-Round Butte Hydropower Project,[38] but there is no preemption issue here.

The Supreme Court has held that state regulation related to a federally licensed hydropower projects is preempted only "to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress."[39] This can occur in the case where a state law imposes a more restrictive condition on the federal hydropower licensee's use of the waterway than FERC imposes in its hydropower license, or the state requires a licensee to obtain a duplicative state permit addressing matters already addressed in the hydropower license. For example, in the case cited by the Tribes, *Sayles Hydro Ass'n v. Maughan,* 985 F.2d 451 (9th Cir. 1993), the court held that a FERC-licensed hydropower project could not be required to obtain a state water permit.[40] However, in *California v. FERC,* "the Supreme Court specifically held that preemption under the FPA applies only when a state measure 'actually conflicts with federal law' or 'the state law stands as an obstacle to the congressional objectives[,]'" and it "also made clear that the FPA leaves intact countless state powers[.]"[41] The Supreme Court also explained there is a "presumption against finding pre-emption of state law in areas traditionally regulated by the States."[42]

Consequently, local and state permits must often be obtained for activities related to hydropower projects, and such state and local permits are not preempted so long as they do not conflict with FERC's licensing requirements. Indeed, in approving of non-project uses within the boundaries of licensed hydropower projects, FERC expressly *requires* compliance with "all necessary local, state, and federal permits" for the activity.[43] To further illustrate the point, recent FERC orders have expressly required compliance with state and local permits for numerous non-project uses approved within licensed hydropower boundaries, including a non-project marina,[44] a non-project

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38 Tribes' Comment Letter at 6.

39 *California v. FERC*, 495 U.S. 490, 506, 110 S. Ct. 2024, 2033 (1990) (cleaned up).

40 *Id.* at 456; *see also California*, 495 U.S. at 506 (California's minimum in-stream flow requirement preempted because it was more restrictive of licensee's use of waterway than FERC's corresponding requirements).

41 *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist*., 673 F.3d 84, 99 (2d Cir. 2012) (quoting *California*, 495 U.S. at 506).

42 *California*, 495 U.S. at 497 (cleaned up).

43 *Ga. Power Co*., 173 FERC ¶ 61,021, P 15 (Oct. 6, 2020).

44 *Id.* (requiring compliance with "all necessary local, state, and federal permits").

campground,[45] a non-project municipal water withdrawal facility,[46] a non-project gas well and related right-of-way,[47] a non-project fire station and public recreation facilities,[48] a non-project railroad crossing the hydropower project's licensed diversion canal,[49] and a highway department's non-project bridge.[50]

Here, there is no conflict preemption for the simple reason that the Council's Site Certificate requires nothing of the federal hydropower licensees. The Council is not requiring the Tribes or PGE to obtain any permits from the Council to operate their hydropower project, much less duplicative permits to their hydropower license. The Site Certificate creates obligations *on Madras Solar* regarding its construction and operation of its proposed solar facility. Thus, *Sayles* is wholly inapplicable. As the cases cited above demonstrate, FERC will normally *require* that state permits like the Site Certificate be obtained as a condition of a non-project use amendment to a hydropower license. The two permitting requirements exist in tandem and are not in conflict.

Further, the existing Site Certificate already includes language within its conditions that incorporates as a condition that Madras Solar comply with any directives on interconnection to the hydropower project's transmission tie line that FERC may require. Specifically, the Site Certificate includes General Standard of Review Condition 3.d., as follows: "The certificate holder shall design, construct, operate and retire the facility substantially as described in the site certificate . . . d. *In compliance with all applicable lawful rules and requirements of federal agencies*."[51] Relatedly, General Standard Condition 9 provides: "The certificate holder is authorized to construct a 230 kV transmission line anywhere within the approved corridor, *subject to the conditions of the site certificate*"[52]—which under Condition 3.d. includes FERC's conditions (if any) on placement of interconnection facilities. The Site Certificate is not preempted, therefore, because it expressly requires compliance with applicable federal law.

The Tribes' Comment Letter suggests that preemption could occur to the extent that the Site Certificate authorizes Madras Solar to begin construction without first obtaining any necessary federal authorizations, such as amendment to the PGE-Tribes

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45 *Ala. Power Co*., 177 FERC ¶ 62,036, P 13 (Oct. 20, 2021) (requiring compliance with "all necessary local, state, and federal permits").

46 *Empire Dist. Elec. Co*., 171 FERC ¶ 62,020, P 14 (April 7, 2020) (requiring compliance with "all necessary local, state, and federal permits").

47 *Sabine River Auth*., 133 FERC ¶ 62,059, P 16 (Oct. 19, 2010) (requiring compliance with "all necessary local, state, and federal permits").

48 *S.C. Pub. Serv. Auth*. , 158 FERC ¶ 62,086, P 15 (Feb. 9, 2017) (requiring compliance with "all necessary local, state, and federal permits").

49 *S.C. Pub. Serv. Auth*., 172 FERC ¶ 62,163, at 64,319 (Sept. 23, 2020) (requiring compliance with "all necessary local, state, and federal permits").

50 *Brookfield White Pine Hydro, LLC*, 178 FERC ¶ 62,095, at 64,264 (Feb. 16, 2022) (requiring compliance with "all necessary local, state, and federal permits").

51 (Emphasis added.)

52 (Emphasis added.)

hydropower license.[53] But this argument attacks a straw man and fails. Madras Solar has never sought—not with its original application or with its instant request for an extension of time—an order from this Council purporting to override federal requirements. As noted above, the Site Certificate expressly requires Madras Solar's compliance with federal requirements and does not state any intent to displace or contradict any requirements FERC may impose. Indeed, the very reason Madras Solar seeks an extension of time to commence construction is to enable FERC's authorization of the non-project use under the hydropower license in accordance with federal regulation prior to commencement of construction.[54] Seeking an extension of time to ensure compliance with federal law does not create a preemption problem.

The Tribes are also mistaken in suggesting that the fence enclosing the point of interconnection substation, as described in the Site Certificate, will exclude PGE and the Tribes from the licensed boundaries of their hydropower facilities.[55] The access gates were included in the original site plans—to which the Tribes did not object before issuance of the Site Certificate—and this is a prime example of an issue that could have been discussed and resolved years ago. It is not entirely clear which area the Tribes are discussing, and discussion of this subject can be confused by the fact that there the two separate 230 kV lines at issue—(1) Madras Solar's own 230 kV tie line that delivers power from the solar facility to the point of interconnection substation; and (2) the 230 kV Pelton-Round Butte line that will be split and routed through the point of interconnection substation. Under current plans, there will be a fence surrounding the point of interconnection substation into which the Madras Solar's 230 kV generator tie line will enter and through which the Pelton-Round Butte 230 kV line will be routed under PGE's design for the interconnection described above. A fence surrounding a high voltage substation is a standard feature for safety and security, and it is required as a part of the interconnection design by the Tribes' co-licensee, PGE, which acts as operator of the hydropower project and the transmission provider operating the affected transmission facilities. Specifically, the Madras Solar-PGE QF-LGIA describes the requirements that PGE designed for the point of interconnection substation through which the Pelton-Round Butte 230 kV line will be routed as including "a fenced area of 233' x 348' with a surface area of 2.2 acres."[56] The point of interconnection substation enclosed by the fence will be a network upgrade under the QF-LGIA, which is a facility that will be owned and controlled by PGE (and presumably also the Tribes). As the owner of that facility, Madras Solar would expect that PGE (and presumably the Tribes, if they wish pursuant to their O&O Agreement with PGE) would control access to this fenced area. Even if these agreements could be read to suggest that Madras Solar controls access to the fenced area around the point of interconnection substation to the exclusion of the

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53 *See* Tribes' Comment Letter at 7 (asserting "the Council is authorizing a related and supporting facility to enter the FERC project boundary for a non-Pelton Project purpose where FERC has reserved exclusive authority to regulate the Pelton generator line").

54 *See* Madras Solar's Request for Amendment No. 1 at 5 ("FERC's approval to interconnect to the Pelton-Round Butte 230-kV line . . . is needed to commence construction").

55 *See* Tribes' Comment Letter at 6 (asserting "the state certificate would eliminate access to the [hydropower tie] line by construction of a fenced boundary").

56 Exhibit 3, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Appendix A p. 1.

owners of the substation (which is not what the agreements state), Article 5.13 of that QF-LGIA also requires Madras Solar to provide PGE access to any Madras Solar-controlled facilities. Thus, the fenced area within the hydropower license boundary will not eliminate access to, or control of, the FERC-licensed 230 kV line by the hydropower licensees. Further, to the extent Madras Solar is misunderstanding the Tribes' concern in this response, Madras Solar can provide any necessary updated site plans to further clarify that site fencing will not eliminate the PGE-Tribes access to the point of interconnection substation or any area within the hydropower project's license boundaries.

The Tribes' Comment Letter also provides discussion regarding the Tribes' rights to off-reservation fishing, as well payment arrangements between PGE and the Tribes related to power sales and fish protection measures in their hydropower license.[57] However, the Tribes' Comment Letter does not explain how Madras Solar's proposed solar project or interconnection to the hydropower project's tie line will adversely affect those concerns, and Madras Solar is aware of no such adverse impacts. PGE designed the interconnection of the solar facility under procedures mandated by FERC and the Oregon Public Utility Commission to ensure no adverse impacts will result from the interconnection. But whatever adverse impacts the Tribes believe may exist as a result of the interconnection are a matter to be resolved at FERC.

IV. Conclusion

In sum, FERC has jurisdiction under the Federal Power Act to license hydropower facilities and to regulate electrical interconnection to regulated transmission lines (including the Pelton-Round Butte 230 kV line at issue). But the Tribes overlook that this Council has jurisdiction as a matter of state law to issue the Site Certificate for a solar facility located on land adjacent to the hydropower project's licensed boundary. The Site Certificate reasonably, and lawfully, describes how the solar facility is proposed to interconnect to the hydropower project's generator tie line and approves that design subject to any further regulatory requirements that FERC may impose through its procedure to amend the hydropower license. This Council's issuance of the Site Certificate and the requested grant of an extension for commencement of construction while matters within FERC's jurisdiction are addressed do not conflict with, and are not preempted by, federal law.

Sincerely,

John Gorman

John Gorman
Madras PV1, LLC

[57] Tribes' Comment Letter at 1-4.

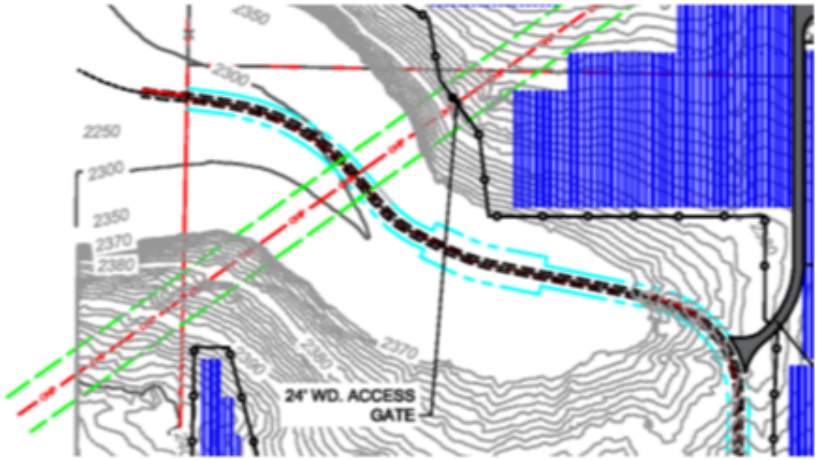
DPO Response to Comments					
Related Site Condition	Comment Summary	ID Number	Comment Page(s)	CTWSO Comment	Certificate Holder Response
AcceGEN-GS-07	*Site Certificate Eliminates Access to FERC-licensed Facility and Transmission Line Easement with Fenced Boundary and Council Authorizing Facility to Enter Project Boundary for Non-Pelton Project Purpose*	1	CTWSO p4 & CTWSO p6	"… the Site Certificate incorporates the Pelton generator line as bisecting the EFSC Facility Site Boundary which means that the State Site Certificate would eliminate access to the FERC licensed facility by construction of a fenced boundary. Site Certificate Condition GEN-GS-07 also purports to authorize the certificate holder to "construct a 230 kV transmission line anywhere within the approved corridor, subject to the site certificate conditions of the site certificate"… which means that the Council is authorizing a related and supporting facility to enter the FERC project boundary for a non-Pelton Project purpose."	The fenced boundary of the solar project will not eliminate access to the FERC licensed 230 kV line. The certificate holder notes that access gates were included in the original site plans. The attached new site plan excerpts show those gate and fencing have been removed, and similar final site plans will be provided prior to construction to further clarify that PV site fencing will not eliminate access to the FERC-licensed 230 kV line. The certificate holder is currently coordinating with FERC to authorize entry into the FERC project boundary to connect to the 230 kV line for non-Pelton Project use.
	Locationally Dependent, Goal 3 Exception	2	CTWSO p5-6	"The Council approved the goal exception, finding that the proposed facility was "locationally dependent." … In particular, Madras asserted that it had "immediate onsite interconnection to Portland General Electric's (PGE) 230 kV Pelton to Round Butte transmission line, which then provides interconnection and delivery from the facility to the regional transmission system without the need to build a new transmission line." … Madras' facility lacks access to any capacity on the Pelton generator line and any interconnection to the Northwest power grid because it has not obtained any approval to interconnect with the Tribe's facility and it has not otherwise obtained approval for a non-Pelton Project use of Pelton Project lands and facilities."	The site is considered high value farmland because it is within the bounds of the North Unit Irrigation District, which designates the site, regardless of underlying soil conditions or National Resource Conservation District soil classification, as high-value farmland. The proposed associated transmission line route would be the most direct route from the proposed substation to the POI, and all alternative routes would also traverse high value farmland. Therefore, the Council agreed that the proposed 230 kV must cross high value farmland to achieve a reasonably direct route in the Final Order. The certificate holder is currently coordinating with FERC to authorize entry into the FERC project boundary to connect to the 230 kV line for non-Pelton Project use.
	FERC Declaratory Order	3	CTWSO p6, paragraph 2	"… Madras asks FERC to exercise discretion to declare that the Tribe does not have the right to consent to interconnection of its facility and, in the alternative, to issue an order under Sections 210, 211 and 212 of the Federal Power Act directing that the Tribe and Madras take all actions needed to make Madras' interconnection effective. Madras further asserts that FERC has reserved discretionary authority in the 2005 FERC license to amend the Pelton Project hydropower license to the extent necessary to allow Madras' interconnection. The Tribe does not concur that FERC has the discretionary authority as advocated by Madras and, to the extent discretion does exist, does not believe that FERC will order use of the Tribe's facilities over its objection."	FERC has authority to address the question of whether the Tribes may unilaterally withhold interconnection access to the generator tie line of a federally licensed hydropower project. As Madras' Petition for Declaratory Order, or in the Alternative, FERC Petition explains in detail, FERC's precedent on this point strongly suggests that FERC will find that the Tribes may not unilaterally withhold consent to interconnect in this case. This is a matter to be decided at FERC, not by the Council, and indeed the very reason for the requested extension of time from the Council here is to allow for such resolution to occur at FERC before construction must commence under the Site Certificate.

Proposed Site Certificate Condition Text Revisions	Current Language	Proposed Revisions
GEN- GS-07	The certificate holder is authorized to construct a 230 kV transmission line anywhere within the approved corridor, subject to the conditions of the site certificate. The approved corridor extends approximately 200 feet in length between the facility substation and the Point of Interconnect, and 0.5-of-a-mile in width. [General Standard Condition 9, Site Specific Condition OAR 345-025-0010(5), Final Order on ASC]	The certificate holder is authorized to construct a 230 kV transmission line ~~anywhere~~ within the approved corridor, upon approval by FERC of the non-project use of lands within the boundary of the Pelton-Round Butte Hydroelectric Project, subject to the conditions of the site certificate. The approved corridor extends approximately 200 feet in length between the facility substation and the Point of Interconnect, and 0.5-of-a-mile in width. [General Standard Condition 9, Site Specific Condition OAR 345-025-0010(5), Final Order on ASC]
PRE-GS-01	Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For the transmission line associated with the energy facility if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line occurs during the certificate holder's negotiations to acquire construction rights on another part of the site. [General Standard Condition 4, Mandatory Condition OAR 345-025-0006(5), Final Order on ASC]	Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site as granted by both EFSC and FERC. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For the transmission line associated with the energy facility if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line occurs during the certificate holder's negotiations to acquire construction rights on another part of the site. [General Standard Condition 4, Mandatory Condition OAR 345-025-0006(5), Final Order on ASC] Certificate holder will obtain construction rights from FERC for the 230kv ROW.

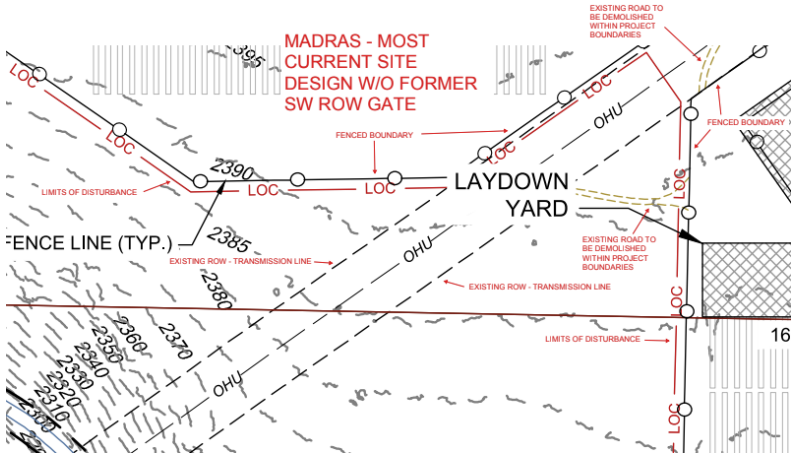
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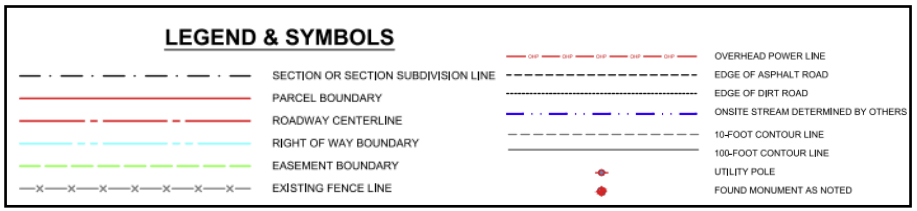
Access to FERC-licensed Facility and Transmission Line Easement

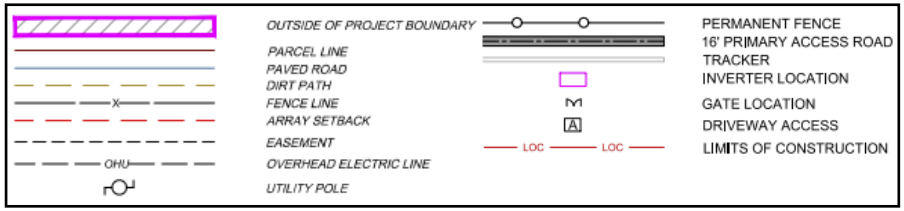
Original site plan excerpt of southwest corridor with fencing and access gate.



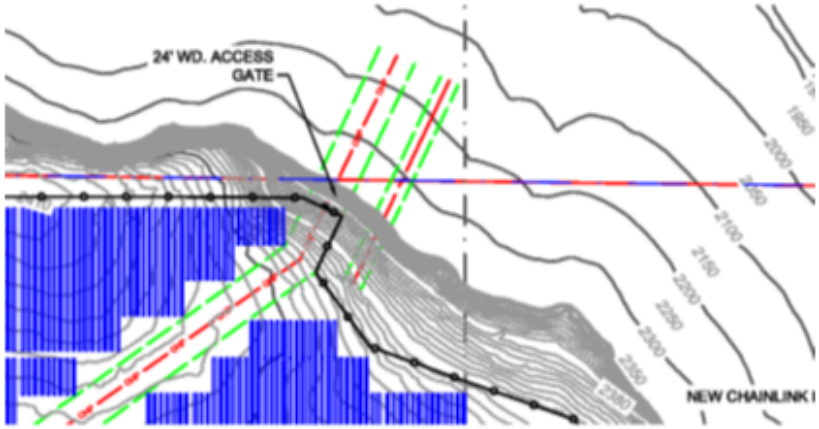
Updated site plan excerpt of southwest corridor without fencing and access gate.







Original site plan of showing northeast corridor with fencing and access gate.



Updated site plan excerpt of northeast corridor without fencing and access gate.

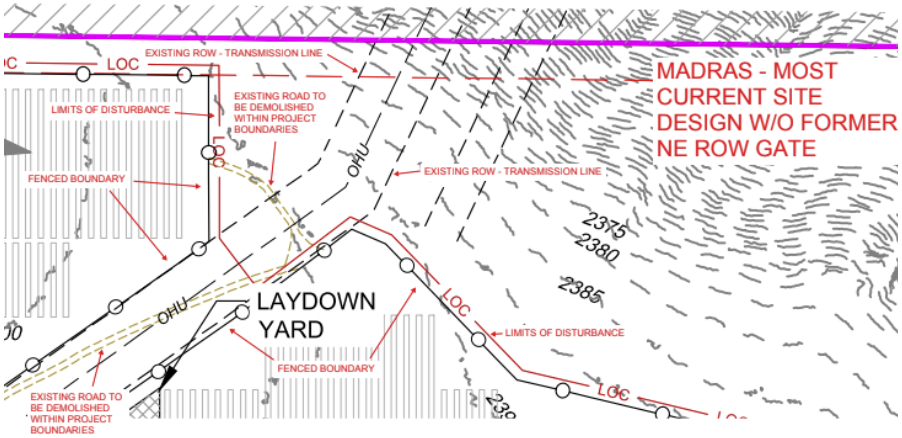


Exhibit List

Exhibit 1: Madras PV 1, LLC's Petition for Petition for Declaratory Order, or in the Alternative, Application for Interconnection and Transmission Services, dated Sept. 4, 2024, FERC Docket Nos. TX24-5 & EL24-150
(Public Version without Exhibits)

Exhibit 2: PGE-Tribes Ownership & Operation Agreement, dated Jan. 1, 2002

Exhibit 3: Madras Solar-PGE QF-LGIA, dated April 8, 2021

Exhibit 4: Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023

EXHIBIT 1

Madras PV 1, LLC's Petition for Petition for Declaratory Order, or in the Alternative, Application for Interconnection and Transmission Services, dated Sept. 4, 2024, FERC Docket Nos. TX24-5 & EL24-150 (Public Version without Exhibits)

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Madras PV1, LLC	) Docket Nos.	EL24-___
	)	TX24-___
	)	P-2030-___

PETITION FOR DECLARATORY ORDER, OR IN THE ALTERNATIVE, APPLICATION FOR INTERCONNECTION AND TRANSMISSION SERVICES AND REQUEST FOR EXPEDITED ACTION

Pursuant to Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure 204 and 207[1] and Sections 210, 211, and 212 of the Federal Power Act ("FPA"),[2] Madras PV1, LLC ("Madras Solar") respectfully submits this petition for declaratory order, or in the alternative, application for interconnection and transmission services.

I. Introduction and Summary

At a time when it has become increasingly difficult to find viable interconnection locations for new renewable energy development, Madras Solar has identified a location that has proven to be an economically viable interconnection location for its proposed solar facility. Unfortunately, however, due to the unique circumstance of the proposed interconnection point being located on a licensed hydropower project's generator tie line that is jointly owned by, and jointly licensed to, a public utility and a non-public utility, Madras Solar has reached a dead end from which it cannot escape without this Commission's assistance.

Specifically, this case arises from Madras Solar's attempt to obtain interconnection for its proposed solar facility to the Pelton-Round Butte 230 kilovolt ("kV") line, which is one of the

[1] 18 C.F.R. § 385.204 & § 385.207.
[2] 16 U.S.C. § 824i, § 824j, & § 824k.

EXHIBIT 1

generator tie lines of the Pelton-Round Butte Project (Hydropower Project No. 2030). While Portland General Electric Company ("PGE") is a public utility and operates the generator tie line as part of its transmission system, the Pelton-Round Butte Project, including the generator tie line at issue, are jointly owned by, and jointly licensed to, PGE and a non-public utility—the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes").

Madras Solar plans to sell its facility's entire net output to PGE under a power purchase agreement entered into pursuant to the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA")[3] with delivery to PGE at the point where the solar facility interconnects to Pelton-Round Butte 230 kV line. Thus, PGE and Madras Solar entered into a Large Generator Interconnection Agreement offered to on-system qualifying facilities ("QF") pursuant to the Public Utility Commission of Oregon's ("OPUC") implementation of the PURPA (the "QF-LGIA"). However, PGE has insisted that Madras Solar must also obtain the consent of its co-owner and co-licensee on the tie line—the Tribes—before PGE will file an application to amend the hydropower license to permit commencement of construction of the solar facility's interconnection. Despite good faith efforts, Madras Solar has been unable to secure the Tribes' consent. Indeed, the Tribes maintain that—despite the QF-LGIA with PGE—the Pelton-Round Butte 230 kV line is a "private" line to which Madras Solar *has no right to interconnect*.

This Commission's precedent clearly proscribes public utilities from "partnering" with non-public utilities through joint ownership arrangements to bar interconnection by competing generators, such as Madras Solar.[4] Further, this Commission has also confirmed, in *City of Tacoma v. S. Columbia Basin Irrigation Dist.*,[5] that nothing in the Part I of the Federal Power Act entitles

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3 16 U.S.C. § 824a-3 *et seq.*

4 *Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1281 (D.C. Cir. 2007).

5 118 FERC ¶ 61,202, PP 33-36 (March 15, 2007).

hydropower licensees to unilaterally deny interconnection to the transmission facilities of licensed hydropower projects. Madras Solar respectfully requests that the Commission invoke those well-established precedents here to enable Madras Solar's proposed interconnection to the Pelton-Round Butte 230 kV line.

Madras Solar first petitions for a declaratory order to remove the uncertainty caused by the Tribes' position that the QF-LGIA provides Madras Solar no right to interconnect to the Pelton-Round Butte 230 kV line and PGE's related position that the Tribes may unilaterally deny Madras Solar's interconnection rights due to their co-ownership of the line. The Federal Power Act, PURPA, and this Commission's implementation of those laws require that in the case of transmission facilities co-owned by a public utility with a non-public utility, the public utility (here, PGE) must interconnect to a generation facility (here, Madras Solar) whether the non-public utility (here, the Tribes) consents or not. Thus, the Commission should issue a declaratory order clarifying that Madras Solar has no need for a separate interconnection or transmission services agreement with the Tribes.

Next, *in the alternative*, to the extent the Commission declines to issue the requested declaratory order, Madras Solar applies, pursuant to FPA Sections 210, 211, and 212,[6] for an order from the Commission requiring that the Tribes and PGE take such action as may be necessary to make effective the proposed interconnection of Madras Solar to the Pelton-Round Butte 230 kV line. Out of an abundance of caution, Madras Solar applies under both FPA Section 210 and Section 211, even though it appears that only Section 210 could be necessary here. All requirements are met under FPA Sections 210 and 211. If the Commission reaches the FPA Sections 210 and 211 application, PGE's existing interconnection studies and available form large

[6] 16 U.S.C. § 824i, § 824j, & § 824k.

PUBLIC VERSION

generator interconnection agreement for FERC-jurisdictional interconnections should be used to expedite the interconnection.

Further, regardless of whether the Commission determines Madras Solar's right to interconnect arises under its existing QF-LGIA or under FPA Sections 210 and 211, the Commission should reject the notion that PGE or the Tribes have the unilateral right under FPA Section 6 to deny interconnection to their licensed project's transmission facilities. Specifically, as it did in *City of Tacoma*, the Commission should exercise its reserved authority in the Pelton-Round Butte Project's license to provide notice of intent to amend the hydropower license to the extent necessary to allow Madras Solar's interconnection.

Madras Solar also respectfully requests expedited action by the Commission with issuance of an order as soon as possible. As explained in more detail herein, the delay in amending the hydropower license has put development of the solar facility far behind schedule and now threatens the viability of the proposed solar facility altogether. **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

II. Communications

All communications and filings in this proceeding should be served to the following persons, whose names should be placed on the Commission's official service list for this proceeding:

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III. Factual Background

Madras PV 1, LLC, in conjunction with its parent company, Ecoplexus Inc. and affiliates, are developing the proposed Madras Solar facility near Madras, Oregon. The proposed facility is self-certified as a QF under PURPA with a power production capacity of approximately 65 megawatts ("MW").[7] This case centers on Madras Solar's attempt to obtain interconnection to sell its proposed facility's net output to PGE through one of the generator tie lines of the Pelton-Round Butte Project (Hydroelectric Project No. 2030), specifically the Pelton-Round Butte 230 kV line.

A. The Pelton-Round Butte Project and Pelton-Round Butte 230 kV Line

The Pelton-Round Butte Project is a 447 MW three-dam complex, co-owned by PGE and

[7] *See* FERC Docket No. QF17-1497.

the Tribes, and located on the Deschutes River near Madras, Oregon.[8] The Round Butte Dam is the farthest upstream, followed by the Pelton Dam, and farthest downstream is the Reregulating Dam.[9] The output from the Round Butte and Pelton powerhouses is transmitted through generator lead lines to the Round Butte Substation.[10] In turn, the Round Butte Substation connects to the larger transmission system, including PGE's 100-mile Round Butte-Bethel 230 kV transmission line that connects to PGE's load center but is not a part of the licensed project.[11] On the western side of the Deschutes River, the project boundary includes lands within the Tribes' reservation, but the Pelton-Round Butte 230 kV line runs along the opposite side of the river for 7.9 miles from the Pelton powerhouse to the Round Butte Substation.[12]

The Pelton-Round Butte Project was historically owned and licensed solely by PGE, but is now jointly owned by, and licensed to, PGE and the Tribes. In 1951, the Federal Power Commission issued a 50-year license to PGE for the Project.[13] In 1980, FERC amended the license to allow the Tribes to construct power generation facilities in the Reregulating Dam as a joint licensee.[14] PGE and the Tribes subsequently filed competing applications for a new license, but they entered into a settlement agreement, whereby PGE would sell the Tribes a 33.33 percent ownership interest in the Pelton and Round Butte facilities with future options for increasing tribal

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8 *See Portland Gen. Elec. Co.*, 111 FERC ¶ 61,450 (June 21, 2005) (hereafter the "Relicensing Order"); *see also* PGE's 2023 Clean Energy Plan and Integrated Resource Plan, Appendix E, p. 489, available at https://assets.ctfassets.net/416ywc1laqmd/3K90DGpYCyqQu9RoLagThu/e85d8569e4a1e9f111ad5499504e5aea/2023_CEP-IRP_Appendix_E.pdf.

9 Relicensing Order, 111 FERC ¶ 61,450 at PP 11-14.

10 *Id.* at PP 12-13 & 157. In contrast, the Reregulating powerhouse's output is initially delivered to PacifiCorp-owned facilities. *Id.*; *Portland Gen. Elec. Co.*, 100 FERC ¶ 62,147, at 64,181-64,183 (Aug. 28, 2002).

11 Relicensing Order, 111 FERC ¶ 61,450 at 62,928 & P 144.

12 *Id.* at PP 13, 107 & n. 45, 157.

13 *Id.* at P 3.

14 *Id.*

ownership.[15] PGE requested the Commission's authorization, pursuant to FPA Section 203,[16] to transfer 33.33 percent of PGE's ownership interests in the Pelton and Round Butte facilities to the Tribes, and the parties also requested transfer of the hydropower license to reflect the Tribes' newly proposed ownership share in the Pelton and Round Butte facilities.[17] The assets proposed for transfer included the Pelton-Round Butte 230 kV line at issue here.[18]

Among the documents supporting the proposed transaction, PGE and the Tribes filed a proposed "Ownership and Operation Agreement" (the "O&O Agreement").[19] The O&O Agreement appoints PGE as the "operator" and "agent" for the Tribes with respect to the project,[20] and it also provides PGE with a right of access to, and control over, the entire project on behalf of both owners.[21] The O&O Agreement also specified that the Tribes would deliver their share of the project's electrical output over the generator tie lines, including the Pelton-Round Butte 230 kV line, for sale to PGE at the Round Butte Substation.[22]

The Commission approved the proposed transfer of 33.33 percent of PGE's ownership interests in these jurisdictional assets to the Tribes, including the proposed O&O Agreement, as an

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15 *Id.* at PP 2-4; *Portland Gen. Elec.*, 93 FERC ¶ 61,183, at 61,601-61,603 (Nov. 21, 2000) (hereafter the "License Transfer Order").

16 16 U.S.C. § 824b.

17 License Transfer Order, 93 FERC ¶ 61,183 at 61,600; *Portland Gen. Elec. Co.*, 93 FERC ¶ 61,184 (Nov. 21, 2000) (hereafter the "FPA Section 203 Order").

18 FPA Section 203 Order, 93 FERC ¶ 61,184 at 61,606 (explaining that the assets conveyed to the Tribes included interests in the "generator leads, step-up transformers and substations").

19 A copy of the O&O Agreement is attached as Exhibit 16. The O&O Agreement was filed in unexecuted form in support of the FPA Section 203 application in Docket No. EC00-08 on April 21, 2000. As drafted and executed, it was effective as of January 1, 2002. The executed version of the O&O Agreement attached hereto is a copy of the document filed by PGE in OPUC Docket No. UM 1704.

20 Exhibit 16, O&O Agreement at Art. 3.1.

21 *See* Exhibit 16, O&O Agreement at Art. 2.4(d).

22 *See* Exhibit 16,O&O Agreement at Art. 5 (entitling Tribes to sell their share of project output to PGE); *Id.* at Art. 5.1(a) ("The Tribes Allocation shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard"); *id.* at Art. 5.8 ("The [Pelton Regulating Dam] Net Output shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard".).

acceptable transfer of utility property.[23] The Commission also amended the hydropower license to reflect the Tribes' new status as co-licensee of the entire project.[24]

In 2005, the Commission also issued a new license with PGE and the Tribes as co-licensees.[25] The current ownership allocation appears to be that the Tribes own 49.9 percent of the project assets, and PGE owns 50.1 percent.[26] The O&O Agreement appears to remain in effect, and PGE and the Tribes have identified for Madras Solar no amendments or other agreements filed with the Commission regarding the operation of the project's generator tie lines.

B. Madras Solar's Development Efforts and QF-LGIA

Madras Solar has been under development for over five years.[27] The proposed solar facility is located on private land east of the Pelton-Round Butte Project's licensed boundary. Madras Solar proposed to interconnect to the Pelton-Round-Butte 230 kV line at a point approximately 4.9 miles north of PGE's Round Butte Substation, and to sell its net output to PGE at that point.[28] The attached area map depicts the general location of the proposed Madras Solar facility in relation to the Pelton-Round Butte Project.[29]

Madras Solar submitted an interconnection request to PGE and funded multiple interconnection studies under PGE's interconnection process.[30] PGE's studies identified all

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23 FPA Section 203 Order, 93 FERC ¶ 61,184 at 61,606-61,607.

24 License Transfer Order, 93 FERC ¶ 61,183 at 61,603 (noting that previously the Tribes were "essentially a licensee for only the Reregulating Powerhouse," but "their acquisition of an undivided 33.33 percent interest in the entire project requires that the license be amended to reflect that the Tribes are at that point co-licensee for the entire project.").

25 Relicensing Order, 111 FERC ¶ 61,450.

26 *See* PGE's 2023 Clean Energy Plan and Integrated Resource Plan, Appendix E, p. 489, available at https://assets.ctfassets.net/416ywc1laqmd/3K90DGpYCyqQu9RoLagThu/e85d8569e4a1e9f111ad5499504e5aea/2023_CEP-IRP_Appendix_E.pdf (stating PGE owns 50.1 percent); *see also* FPA Section 203 Order, 93 FERC ¶ 61,184 at 61,606 (describing Tribes' right to exercise options to increase ownership share).

27 Exhibit 1, Declaration of Erik Stuebe, at ¶ 4.

28 *Id.* at ¶ 5.

29 *Id.*; Exhibit 2, General Location Map of Proposed Madras Solar Facility.

30 The two key interconnection studies are attached as exhibits: Exhibit 3, PGE's System Impact Re-Study, dated July 12, 2019; and Exhibit 5, PGE's Facilities Study, dated Feb. 10, 2021.

interconnection and network upgrades needed to safely interconnect the solar facility as proposed. The PGE-produced studies proposed to split the Pelton-Round Butte 230 kV line and loop it through a new point of interconnection substation to be located approximately 4.9 miles north of the Round Butte Substation.[31] To support network resource interconnection service and ensure PGE's capability to deliver Madras Solar's output to PGE's loads over the non-project Round Butte-Bethel line, PGE will require installation of a fixed series capacitor adjacent to the Round Butte Substation, among other network upgrades.[32] PGE estimated a total cost of over $23 million for the network upgrades.[33]

Although Madras Solar initially filed a complaint against PGE at the OPUC to resolve certain disputes with PGE related to its proposed interconnection and sale under PURPA,[34] Madras Solar and PGE resolved their dispute and executed a power purchase agreement and an interconnection agreement that requires the upgrades PGE proposed in the interconnection studies as discussed above.[35] During the OPUC proceeding, PGE concluded that the interconnection was an "on-system" QF interconnection, and thus the parties used PGE's OPUC-jurisdictional QF-LGIA form as opposed to PGE's FERC-jurisdictional LGIA in its Open Access Transmission Tariff ("OATT").[36] Notably, the OPUC-jurisdictional QF-LGIA contains significant disadvantages for

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[31] *See* Exhibit 3, PGE's System Impact Re-Study, dated July 12, 2019, at 5 & 13-16; *see also* Exhibit 5, PGE's Facilities Study, dated Feb. 10, 2021, at 5-12.

[32] Exhibit 3, PGE's System Impact Re-Study, dated July 12, 2019, at 13-16; *see also* Exhibit 5, PGE's Facilities Study, dated Feb. 10, 2021, at 5-12.

[33] *See* Exhibit 5, PGE's Facilities Study, dated Feb. 10, 2021, at 8-14.

[34] *See* OPUC Docket No. UM 2009, https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=21894.

[35] Exhibit 1, Declaration of Erik Stuebe, at ¶ 7. The QF-LGIA is attached as Exhibit 6. The parties have also amended the QF-LGIA once, and the QF-LGIA First Amendment is attached as Exhibit 7. The interconnection studies and the initial QF-LGIA describe the Madras Solar facility as including battery energy storage, but the final configuration, as reflected in the amended QF-LGIA, does not include storage. Exhibit 7, Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023, at Appendix C.

[36] *See* Exhibit 4, PGE's Response to Madras Solar's Data Request Response No. 63, OPUC Docket No. UM 2009, dated Oct. 28, 2019 ("PGE confirms that Madras Solar proposes to interconnect to PGE's transmission system and that PGE has therefore determined that Madras Solar is an on-system QF.").

PUBLIC VERSION

Madras Solar and benefits for PGE and the Tribes, including that unlike a FERC-jurisdictional LGIA, the QF-LGIA does not entitle Madras Solar to a refund for all network upgrades, which total over $23 million in this case.[37] Nevertheless, based on PGE's position and to move the solar project forward, Madras Solar executed the OPUC-jurisdictional QF-LGIA.[38]

Under the terms of the executed QF-LGIA, the point of delivery of Madras Solar's net output to PGE will be the point where the Madras Solar's own generator lead line enters a new PGE-owned point of interconnection substation through which the Pelton-Round Butte 230 kV line will be routed.[39] PGE would take title to the Madras Solar's net output at that point and designate the resource as network resource under Part III of PGE's OATT.[40] Accordingly, aside from the executed QF-LGIA, there should be no need for any other transmission services agreement to deliver the net output to the point where PGE will take title to it.

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[37] *See* Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 11.4 & Appendix A, p. 5; *see also id.* at Art. 12.2 (requiring interconnection customer to pay for network upgrades); *compare to* Exhibit 17, PGE's OATT LGIA, at Art. 11.4 (providing for repayment of all amounts advanced by the interconnection customer for network upgrades plus interest within 20 years after achieving commercial operation).

[38] Exhibit 1, Declaration of Erik Stuebe, at ¶ 8.

[39] Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 1, p. 8 ("Point of Change of Ownership shall mean the point, as set forth in Appendix A to the QF-LGIA, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities."); *id.* ("Point of Interconnection shall mean the point, as set forth in Appendix A to the QF-LGIA, where the Interconnection Facilities connect to the Transmission Provider's Transmission System."); *id.* at Appendix A, p. 1 ("The Point of Change of Ownership between the Interconnection Customer's generator lead line and the POI substation will be at the last dead-end structure before entering the POI substation. . . . The conductors and any disconnecting devices between the Point of Change of Ownership and the POI substation bus are considered the Transmission Provider's Interconnection Facilities."); *accord* Exhibit 7, Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023, at Appendix A (same); **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

[40] Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 4.2 ("Transmission Provider shall provide Network Resource Interconnection Service for the Large Generating Facility at the Point of Interconnection.").

PUBLIC VERSION

All Madras Solar-owned interconnection facilities and certain PGE-owned facilities (including the point of interconnection substation) will be located on private land to which Madras Solar has acquired property interests.[41] However, based on PGE's studies, certain interconnection and network upgrade facilities are located within the licensed boundary of the Pelton-Round Butte Project.[42] In particular, the lands proposed to be used for the fixed series capacitor substation and the lands within the existing right of way through which the Pelton-Round Butte 230 kV line runs, adjacent to the newly proposed point of interconnection substation, are within the license boundary and thus co-owned by the Tribes.[43]

PGE takes the position that, prior to beginning interconnection construction, the Pelton-Round Butte Project's license must be amended to accommodate the non-project use of Madras Solar's interconnection.[44] The QF-LGIA requires Madras Solar to "reasonably cooperate" with PGE with respect to the non-project use amendment, including by: "(1) completing required environmental and cultural resources studies and reports in support of the filing; and (2) providing any information reasonably requested by Transmission Provider in connection with such filing, including, but not limited to, information necessary to address stakeholder and agency comments during the drafting and review process."[45]

After experiencing delays in coordinating with the Tribes and PGE, Madras Solar has now completed the QF-LGIA's identified environmental and cultural resources study—utilizing the

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41 Exhibit 1, Declaration of Erik Stuebe, at ¶ 9.

42 *Id.*

43 *Id.*; *see also* Exhibit 5, PGE's Facilities Study, dated Feb. 10, 2021, at 7 (POI Substation); *id.* at 10 (series capacitor substation); *id.* at 13 (Pelton-Round Butte 230 kV line).

44 *See* Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 3.1 ("Because the Point of Interconnection is within the boundary of a FERC-regulated hydroelectric project (the Pelton-Round Butte Project, FERC No. 2030, which is co-owned by Transmission Provider and the Confederated Tribes of Warm Springs), Transmission Provider will be required to file a request at FERC for approval of a non-project use of project land.").

45 Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 3.1.

Tribes' preferred consultant for cultural studies—and sent the final draft of that study to PGE for inclusion in the application for license amendment.[46] The study concludes that the proposed solar facility's interconnection project will not present significant environmental, cultural, or recreational impacts, and therefore allowing its construction within the Pelton-Round Butte Project's license boundary does not present a conflict with the hydropower licensing requirements.[47] Madras Solar has also obtained all non-ministerial state, local, and federal permits (aside from hydropower license amendment).[48] The key permitting step precluding commencement of construction of the Madras Solar facility is the amendment of the Pelton-Round Butte Project's license.[49]

C. PGE and Tribes' Refusal to File an Application for License Amendment

Given that the proposed interconnection has no impact on the water available for the hydropower operations, that the proposed interconnection minimizes environmental impact by interconnecting to existing infrastructure, and that Madras Solar is allocated the costs of upgrading the PGE and Tribes' facilities in the QF-LGIA, the amendment of the hydropower license should be relatively straightforward and uncontroversial. However, PGE and the Tribes have clearly expressed that they will *not* file an application for license amendment—threatening the viability of Madras Solar.

For its part, PGE has insisted that the Tribes must consent to the interconnection and maintains that Madras Solar has the sole responsibility to obtain such consent from the Tribes.[50]

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46 Exhibit 1, Declaration of Erik Stuebe, at ¶ 12.

47 *Id.*

48 *Id.*

49 *Id.*

50 *See* Exhibit 9, PGE's Letter Re LGIA Milestones, dated February 6, 2024, at 4 ("PGE wishes to underscore in all circumstances and in every respect it is the responsibility and the obligation of Madras, and Madras alone, to obtain the express approval of the Tribe for the FERC application.").

PUBLIC VERSION

As amended, the QF-LGIA includes a milestone date of no later than December 30, 2023, by which the parties intended for PGE to file the license amendment application to achieve a revised operation date in the QF-LGIA of December 31, 2025.[51] **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

While Madras Solar disagrees with PGE's attempt to allocate all responsibility to amend the hydropower license to Madras Solar, Madras Solar has engaged in extended and good faith efforts to secure the Tribes' amicable consent to the interconnection and amendment of the license.[53] Over a period of approximately two years, Madras Solar has had numerous meetings with the Tribes' representatives, including Warm Springs Power and Water Enterprises, which the Tribes have explained is a wholly owned enterprise of the Tribes and was formed, in part, to manage the Tribe's interests as owner in the hydropower project.[54] Yet, Madras Solar has been unable to secure the Tribes' consent.[55]

Finally, even though Madras Solar maintains the QF-LGIA negates the need for a separate interconnection or transmission services agreement with the Tribes, Madras Solar sent the Tribes a good faith request for interconnection and transmission services, including all information

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51 Exhibit 7, Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023, at Appendix B; The December 30, 2023 QF-LGIA milestone specifies two conditions: (1) Madras Solar's completion of environmental and cultural studies and necessary permits, and (2) "support for the FERC application in writing from the Joint Licensee of the Pelton-Round Butte Project, the Confederated Tribes of Warm Springs." Exhibit 7, Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023, at Appendix B.

52 **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

53 Exhibit 1, Declaration of Erik Stuebe, at ¶ 15.

54 *Id.*

55 *Id.*

required by 18 C.F.R. § 2.20(b).[56] Madras Solar proposed the interconnection would be pursuant to the terms of the executed QF-LGIA and further stated:

> However, to the extent that [the Tribes] can identify some authority or right to insist on additional compensation for use of the hydropower project's transmission facilities beyond that provided for in the LGIA, we hereby formally request, on behalf of Madras Solar, that [the Tribes] identify the basis for such right and the additional terms and conditions of interconnection and transmission service [the Tribes] would require."[57]

The Tribes' responded, through Warm Springs Power and Water Enterprises, by expressing their belief that the Pelton-Round Butte 230 kV line is a "privately owned gen-tie" to which Madras Solar may not interconnect.[58] Indeed, the Tribes assert that, "[n]otwithstanding the Large Generator Interconnection Agreement between [Madras Solar] and PGE, [Madras Solar] has no interconnection rights to the Tribe's facilities."[59] The Tribes assert that Madras Solar should construct a separate generator tie line to PGE's Round Butte substation.[60]

Thus, in the months that have passed after the QF-LGIA's goal of filing the license amendment application on December 01, 2023, it has become clear that PGE will not file any

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[56] *Id.* at ¶ 16; Exhibit 12, Madras Solar's Letter and Good Faith Interconnection and Transmission Service Request to Tribes, dated June 7, 2024, at 2 (explaining, "while Madras Solar maintains that [the Tribes have] no right to impose any additional terms for use of the transmission facilities beyond the requirements of the executed and enforceable QF-LGIA with the authorized operator of the facilities (which is PGE), Madras Solar is submitting, *in the alternative*, a good faith request for service on terms [Tribes] would require.").

[57] Exhibit 12, Madras Solar's Letter and Good Faith Interconnection and Transmission Service Request to Tribes, dated June 7, 2024, at 2.

[58] Exhibit 13, Warm Springs Power and Water Enterprises' Letter Rejecting Madras Solar Interconnection and Transmission Services Request, dated June 24, 2024, at 1.

[59] Exhibit 13, Warm Springs Power and Water Enterprises' Letter Rejecting Madras Solar Interconnection and Transmission Services Request, dated June 24, 2024, at 1 ("The Tribe takes the position that [Madras Solar] has no right to interconnection on the Pelton generator lead line.").

[60] Exhibit 11, Warm Springs Power and Water Enterprises' Letter Re Madras Solar Interconnection, dated May 20, 2024, at 1 ("As we understand your request, you wish to utilize Tribally-owned (with PGE) Project facilities and lands *in lieu* of constructing your own generation-tie line to the point of interconnection at the Round Butte Substation. . . . It is not the responsibility of the Tribe to offer use of Project facilities to Madras PV1 to avoid costs that it otherwise should have planned for as a project cost . . .").

license amendment application.[61] Most recently, PGE argues it has "no authority to complete the interconnection or file the FERC non-project use amendment to the hydro license without the Tribes' prior approval" and further, that "FERC has no authority under the Federal Power Act to approve any such amendment of the Project License without the Tribes' consent."[62]

IV. Petition for Declaratory Order

A. Introduction: The Commission Should Issue a Declaratory Order Finding that Because Madras Solar Has a Right to Interconnect to the Pelton-Round Butte 230 kV Line Pursuant to its QF-LGIA with PGE, No Separate Interconnection or Transmission Services Agreement with the Tribes Is Necessary to Interconnect the Solar Facility for Sale of Net Output to PGE.

The Commission should clarify through a declaratory order that Madras Solar's QF-LGIA precludes the need for a separate FERC-jurisdictional interconnection and/or transmission services agreement with PGE or the Tribes. Such a declaratory order is necessary to remove the uncertainty caused by the Tribes' position that the QF-LGIA provides Madras Solar no right to interconnect to the Pelton-Round Butte 230 kV line and PGE's related position that the Tribes may unilaterally deny Madras Solar's interconnection rights due to their co-ownership of the line. As explained below, the Commission should reject those positions for two independent reasons. *First*, in the case of transmission facilities co-owned by a public utility with a non-public utility, the FPA and PURPA require the public utility (here, PGE) to interconnect to a generation facility (here, Madras Solar) whether the non-public utility (here, the Tribes) consents or not. *Second*, although no side agreement between PGE and the Tribes could lawfully deny such interconnection, the O&O Agreement between PGE and Tribes affirmatively confirms that PGE was required to, and did, enter into the QF-LGIA in its capacity as agent and operator of the Pelton-Round Butte Project on

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61 Exhibit 1, Declaration of Erik Stuebe, at ¶ 18.

62 Exhibit 14, PGE's Letter, dated August 6, 2024, at 2-3.

behalf of both owners of the project.

B. Under the FPA, PURPA, and this Commission's Rules Governing Transmission Facilities Co-owned by a Public Utility and a Non-Pubic Utility, PGE Was Required to Enter Into the QF-LGIA, and No Other Interconnection or Transmission Services Agreement with the Tribes Is Necessary.

The Commission has clearly explained that public utilities may not partner with non-public utilities to preclude open access to transmission facilities partially owned by the public utility. For the reasons explained below, that policy applies here and establishes that no further interconnection agreement with the Tribes is necessary for Madras Solar.

PGE is a public utility, and the Pelton-Round Butte 230 kV line is a part of PGE's transmission system subject to the FPA and this Commission's open access rules.[63] The OATT and all other open access requirements apply because the Pelton-Round Butte Project's tie lines are not PGE's only jurisdictional transmission facilities.[64] The fact that the Tribes obtained an ownership interest in that generator tie line did not change the line's open access status under this Commission's longstanding rules.

In Order No. 888,[65] the Commission examined this issue and determined that public

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[63] 16 U.S.C. § 824(e); 18 C.F.R. § 35.28; *see also* Exhibit 3, PGE's System Impact Re-Study, dated July 12, 2019, at 9 ("The PGE Transmission System in Central Oregon consists of [Pelton Round Butte], *the generation lead lines from [Pelton Round Butte] to the Round Butte substation . . .*" (emphasis added)); Exhibit 4, PGE's Response to Madras Solar's Data Request Response No. 63, OPUC Docket No. UM 2009, dated Oct. 28, 2019 ("Madras Solar proposes to interconnect to PGE's transmission system").

[64] *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, PP 41 & 43 (March 19, 2015) (exempting public utilities from certain OATT requirements where such requirements apply "solely because it owns, controls, or operates [Interconnection Customer Interconnection Facilities] in whole or in part, and sells electric energy from its generating facility").

[65] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission on Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.,* Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (Nov. 25, 1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (Jan. 20, 1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp.* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y.* v. *FERC,* 535 U.S. 1 (2002).

utilities may not rely on co-ownership with non-public utilities to deny open access to transmission facilities. The Commission stated: "We will not allow public utilities that jointly own interstate transmission facilities with non-jurisdictional entities to escape the requirements of open access."[66] Indeed, open access applies to such jointly owned facilities "even if the joint ownership contract prohibits service to third parties."[67] Thus, the Commission ordered public utilities to amend and file with Commission any agreement with a non-public utility that might preclude third-parties' open access and to remove such restrictions unilaterally if necessary.[68] In Order No. 888-A, the Commission rejected challenges to this policy despite its impact on non-public utilities, explaining: "Otherwise, a public utility could simply enter into joint agreements with non-jurisdictional utilities to the frustration of the Commission's mandate to protect consumers from undue discrimination."[69]

This Commission's policy on jointly owned facilities was in effect at the time the Tribes acquired an interest in the Pelton-Round Butte 230 kV line in 2000 through the Commission-approved transfer of assets and supporting agreements, including the O&O Agreement. In this Commission's words: "When the contract was entered into and filed with the Commission it was with the explicit knowledge that the Commission could regulate the rates, terms and conditions of the contract with respect to the jurisdictional services provided thereunder by the public utility."[70] And this policy remains in place today for any unfiled side agreements that PGE and the Tribes

66 Order No. 888, 61 Fed. Reg. 21,540 at 21,573.
67 *Id*.
68 *Id.* ("For those joint ownership arrangements that include restrictions on the usage of jointly owned transmission facilities by third parties, we will require the public utilities, in a section 206 compliance filing, to file with the Commission, by December 31, 1996, a proposed revision (mutually agreeable or unilateral) to its contract with the non-jurisdictional owner(s).").
69 Order No. 888-A, 62 Fed. Reg. at 12,300.
70 Order No. 888-A, 62 Fed. Reg. at 12,300.

may have purported to enter into since they filed the O&O Agreement in 2000.[71]

Further to the point here, the Commission expressly required open *interconnection* access to such jointly owned facilities in Order No. 2003.[72] A public utility objected that "should negotiations be unsuccessful [with the non-public utility], it is unclear how the jurisdictional public utility can permit interconnection only to the public utility's 'portion' of the facilities[.]"[73] But the Commission explained: "If a portion of a facility is owned by a jurisdictional public utility, the Interconnection Customer seeking interconnection for a Commission-jurisdictional purpose will be able to secure interconnection to that facility under the terms of Order No. 2003 through the jurisdictional co-owner of the facility."[74] Just as in Order No. 888, the Commission required that "should the joint ownership agreement prohibit or restrict the right of the public utility to offer interconnection service to third parties, the public utility must make a section 206 compliance filing containing proposed revisions (mutually agreeable or unilateral) to its contracts with the non-jurisdictional co-owners to remove those restrictions."[75]

Thus, both before and after the time that PGE transferred to the Tribes an ownership interest in the Pelton-Round Butte 230 kV line in 2000 the Commission has made clear that joint ownership agreements—such as the O&O Agreement—*may not* restrict the right of any generator, including Madras Solar, to access the transmission facilities. Madras Solar properly requested service from the jurisdictional public utility as this Commission's rules require. Further, despite PGE's

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71 18 C.F.R. § 35.28(c)(iii).

72 *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 807 (July 24, 2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (Dec. 20, 2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (June 16, 2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs*, 475 F.3d 1277.

73 Order No. 2003-A, 106 FERC ¶ 61,220 at P 749.

74 *Id.* at P 753.

75 *Id.* at P 754.

longstanding insistence that Madras Solar is solely responsible for obtaining the Tribes' consent to the interconnection, the Commission said that is PGE's responsibility: "If the non-jurisdictional co-owner does not have a reciprocity tariff, then the Interconnection Request should go to the Commission-jurisdictional co-owner, *who must then work with its non-jurisdictional co-owner to coordinate the study process*."[76]

Notably, the D.C. Circuit Court of Appeals expressly affirmed the Commission's joint-ownership policy. In a challenge to Order No. 2003, the court rejected the argument that construction of an interconnection to a jointly owned line would violate the non-public utility's rights.[77] The court agreed with the Commission that "jurisdictional utilities should not be able, without linguistic support from Congress, to escape regulation simply by partnering with non-jurisdictional utilities."[78] Just as it did in Order No. 888, FERC properly removed non-public utilities' "hitherto valid veto power over the proposed use" of the jointly owned facilities.[79]

The fact that Madras Solar executed a QF-LGIA—as opposed to a FERC-jurisdictional LGIA offered through PGE's OATT—makes no difference and creates no need for a further agreement with the Tribes. Under Commission precedent, a QF interconnection is FERC-jurisdictional "when an electric utility interconnecting with a QF does not purchase all of the QF's output[.]"[80] In contrast, if the electric utility interconnecting with the QF purchases the QF's entire

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[76] *Id*. at P 755 (emphasis added); *compare to* Exhibit 14, PGE's Letter, dated August 6, 2024, at 5 (responding to inquiry as to whether PGE believes the Tribes may require a separate interconnection agreement as follows: "PGE takes no position on whether agreements between Madras and the Tribes are required; that is a matter for Madras to resolve with the Tribes, as PGE has made clear through the duration of the Madras project's development.").

[77] *Nat'l Ass'n of Regulatory Util. Comm'rs*, 475 F.3d at 1281-82.

[78] *Id*. at 1281 (internal quotation omitted).

[79] *Id.* at 1282.

[80] Order No. 2003, 104 FERC ¶ 61,103, at P 813; *see also Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,991-61,992 (July 30, 1993), *order on reh'g*, 65 FERC ¶ 61,081 (Oct. 19, 1993) (the Commission "alone exercises authority over QF interconnections with utilities standing between the QF and its purchaser, i.e., agreements under which third-party utilities, which do not purchase QF-generated power, nevertheless transmit QF power in

net output, the QF enters into the interconnection agreement pursuant to the state's implementation of the Commission's mandatory purchase rules.[81] Madras Solar had understood that no interconnection service or transmission service from the Tribes would be necessary to interconnect and sell all net output to PGE, and PGE proposed to use the OPUC-jurisdictional QF-LGIA. However, a QF has no less rights than those available under Order No. 2003 when it comes to interconnecting to a jointly owned line—that is, the public utility is required to interconnect to the QF notwithstanding that the co-owner of the line is not a regulated public utility.

PURPA and this Commission's implementation of it are clear that QFs have no fewer interconnection rights than non-QFs. Section 210(b) of PURPA affirmatively commands that the Commission's rules "(a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase . . . *shall not discriminate against qualifying cogenerators or qualifying small power producers*."[82] Thus, the Commission has held that QFs are entitled to the same non-discriminatory use of the interstate transmission grid as any traditional utility under the OATT.[83] And the Commission's mandatory purchase provisions require that such interconnections

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interstate commerce."); *see also id.* at 61,992 ("even if the QF or the utility customer does not actually take transmission service as soon as the line enters the grid, the interconnection agreement 'facilitates' future service and falls within our section 205 jurisdiction.").

[81] *See* Order No. 2003, 104 FERC ¶ 61,103, at P 813 ("when [an electric utility] purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.").

[82] 16 U.S.C. § 824a-3(b)(2) (emphasis added); *see also Environmental Action, Inc. v. FERC*, 939 F.2d 1057, 1061-62 (D.C. Cir. 1991) (reversing order that denied QF's equal benefit of mandatory wheeling required for other generators in utility merger because purpose of PURPA is "to ensure that large power producers do not discriminate against QFs"); *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, at P 37 & n 72 (Dec. 16, 2013) (curtailing QF energy deliveries before utility's other resources was unlawfully discriminatory).

[83] *See Pub. Serv. Co. of N.H. v. N.H. Elec. Coop., Inc.*, 83 FERC ¶ 61,224, at 61,998-62,000 (May 29, 1998), *reh'g denied*, 85 FERC ¶ 61,044 (1998) ("Virtually all public utilities that own interstate transmission facilities now provide open access transmission services pursuant to Order No. 888 and QFs are among the entities eligible to receive such service. . . . Any QF may employ NU's or the New England

to QFs be made on a non-discriminatory basis by the purchasing utility.[84]

Just as with non-QFs, public utilities may not partner with non-public utilities to restrict QFs' right to interconnect to co-owned transmission facilities. Nor should public utilities be permitted to frustrate interconnection by a QF to jointly owned facilities by forcing the QF to separately obtain interconnection to the non-public utility through Section 210 of the FPA. Indeed, the PURPA interconnection requirement exists in 18 C.F.R. § 292.303(c) because the Commission's efforts to encourage QFs consistent with PURPA "would be greatly hindered if it were to require qualifying facilities to utilize section 210 of the Federal Power Act as the exclusive means of obtaining interconnection."[85]

Under this legal framework, PGE was required to enter into the QF-LGIA, and no further interconnection agreement with the Tribes is necessary. Further, under Madras Solar's QF-LGIA, PGE would take title to Madras Solar's net output at the point where it flows onto the jointly owned PGE-Tribes facilities, and PGE would designate the facility as a network resource under Part III of PGE's OATT from that point onward—thus negating any need for Madras Solar to pay for any other wheeling or transmission service over the PGE-Tribes co-owned facilities.

C. The O&O Agreement Separately Confirms that PGE Had Authority to Enter Into the QF-LGIA and that No Further Interconnection Agreement Is Necessary with the Tribes.

Nothing in the O&O Agreement overcomes the Commission's open access policy for jointly owned lines. Instead, the O&O Agreement even supports the conclusion that PGE lawfully

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Power Pool's open access transmission tariff to reach NHEC and require NHEC to purchase that QF's power").

[84] *See* 18 C.F.R. § 292.303(c) ("any electric utility shall make such interconnection with any qualifying facility as may be necessary to accomplish purchases or sales . . ."); 18 CFR § 292.306 (interconnection charges to QF must be made "on a nondiscriminatory basis").

[85] *Small Power Production and Cogeneration Facilities, Regulations Implementing Sections 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,221 (Feb. 25, 1980).

entered into the QF-LGIA in its capacity as agent and operator of the Pelton-Round Butte Project.

As noted above, the O&O Agreement designates PGE as the operator of the project and agent with access to all facilities to ensure compliance with applicable laws. Specifically, the O&O Agreement designates PGE "as agent for and on behalf of the Owners."[86] In that capacity, PGE "shall, in accordance with . . . all Applicable laws, orders, permits, and license, now or hereinafter effect: . . . operate and maintain the Project; . . . take any and all actions necessary or appropriate to comply with such Applicable Laws, orders, permits and licenses, now or hereafter in effect;" and it "shall have the rights and powers to . . . enter into contracts with third parties for and in behalf of the Owners."[87]

The O&O Agreement does not purport to restrict third parties' open access rights to the Pelton-Round Butte Project's transmission facilities. And in response to Madras Solar's requests, PGE and the Tribes have supplied no other agreements that purport to do so. Under the plain terms of the O&O Agreement, PGE had authority to enter into the QF-LGIA with Madras Solar—just as PGE was affirmatively required to do under this Commission's joint-ownership policy. In other words, this is not a case where "the joint ownership contract prohibits service to third parties."[88] That conclusion is further supported by the fact that the Commission's policy on access to jointly owned transmission facilities was well known through Order No. 888 before PGE proposed to transfer the transmission assets at issue to the Tribes in 2000. Yet PGE and the Tribes identified no restrictions on third-party access in seeking the Commission's approval of the asset sale. Notably, in approving that transfer, the Commission found the transfer of utility property was

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86 Exhibit 16, O&O Agreement at Art. 3.1(b).

87 Exhibit 16, O&O Agreement at Art. 3.1(b); *see also id.* at Art. 2.4(d) ("Each Owner and its designees shall have the right to go upon and into the Project at any time, subject to the necessity of efficient and safe construction and operation of the Project, but the Operator alone shall have possession and control of the Project for and on behalf of all of the Owners.").

88 Order No. 888, 61 Fed. Reg. 21,540 at 21,573.

"consistent with the public interest," which required the Commission to take into account, among other factors, "the effect on competition" and "the effect on regulation."[89] The Commission agreed that "federal regulation will not be impaired because the Commission will continue to have jurisdiction over and regulate the wholesale power sales *and transmission service provided by PGE*."[90] Further, after the Commission issued Order No. 2003 in 2003, PGE and the Tribes appear to have made no filing to remove restrictions against third party access because, apparently, none exist.

This conclusion is further bolstered by the warranties PGE made in the QF-LGIA as to its authority to execute and perform under that agreement. The QF-LGIA Recitals defined PGE as the "Transmission Provider and/or Transmission Owner," and PGE executed the QF-LGIA in that capacity.[91] PGE also warranted that it had the authority to execute the QF-LGIA and perform its tasks thereunder, without mention of a unilateral veto right or the need for the Tribes to execute the QF-LGIA.[92]

In sum, the Tribes are mistaken in believing that a generator tie line to a Commission-licensed hydropower project is "a privately owned gen-tie" that is outside the purview of open access because, among other reasons, the Tribes' co-owner is a public utility. Where the public utility co-owner that operates the line has executed an interconnection agreement with a QF for

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89 FPA Section 203 Order, 93 FERC ¶ 61,184 at 61,606-61,607.

90 *Id.* at 61,607 (emphasis added).

91 Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021 at p. 1.

92 *See* Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 28.1.2 ("Authority," providing: "Such Party has the right, power and authority to enter into this QF-LGIA, to become a Party hereto and to perform its obligations hereunder."); *id.* at Art. 28.1.3 ("No Conflict", providing: "The execution, delivery and performance of this QF-LGIA does not violate or conflict with . . . any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets."); *id.* at Art. 28.1.4 ("Consent and Approval," providing: "Such Party has sought or obtained, or, in accordance with this QF-LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this QF-LGIA, and it will provide to any Governmental Authority notice of any actions under this QF-LGIA that are required by Applicable Laws and Regulations.").

interconnection to such line, no separate interconnection agreement with the non-public utility is necessary. The Commission should so declare, and proceed to the question of amendment of the hydropower license (*see infra* Section VI.).

V. FPA Sections 210 and 211 Application

A. Summary of Application: In the Alternative, the Commission Should Grant Madras Solar's Application for Interconnection Under FPA Section 210 and, to the Extent Necessary, Transmission Services Under FPA Section 211.

Alternatively, to the extent the Commission declines to issue the requested declaratory order, Madras Solar applies, pursuant to FPA Sections 210, 211, and 212,[93] for an order from the Commission requiring that the Tribes and PGE take such action as may be necessary to make effective the proposed interconnection of Madras Solar's facility to the Pelton-Round Butte 230 kV line. As explained below, Madras Solar submits that the Commission should direct the use of the existing interconnection configuration proposed by PGE in Madras Solar's QF-LGIA, but that PGE's FERC-jurisdictional LGIA offered in its OATT should be used. However, to the extent the Commission disagrees, Madras Solar respectfully requests that the Commission establish such other terms for the interconnection and, if necessary, transmission services that the Commission deems just, reasonable, and non-discriminatory.[94]

Madras Solar applies under both FPA Section 210 and Section 211, even though it appears that only Section 210 could be necessary here. Ordinarily, an interconnection to a generator tie line may require both interconnection and transmission service to reach the transmission system at the end of the generator tie line.[95] However, under Madras Solar's proposed interconnection,

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93 16 U.S.C. § 824i, § 824j, & § 824k.

94 *See* 16 U.S.C. § 824k(a) ("Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential.").

95 *See* Order No. 807, 150 FERC ¶ 61,211, at PP 104-107.

PGE would take title to the Madras Solar's net output at the point where the Madras Solar's own generator lead line enters a new PGE-owned point of interconnection substation through which the Pelton-Round Butte 230 kV line will be routed. PGE would arrange its own network transmission under Part III of PGE's OATT from that point onward.[96] Thus, Madras Solar seeks to transfer its net output to PGE without transmitting it over any intervening facilities co-owned by the Tribes and PGE before PGE takes title to the net output, which negates the need for a transmission services or wheeling agreement. In any event, out of an abundance of caution, Madras Solar includes an application under Section 211 for such transmission services as the Commission may determine are necessary to deliver Madras Solar's net output for sale to PGE.[97] If necessary, the requested transmission service would commence on the initial energization date of the proposed solar facility and correspond to the 10-year term (with annual renewal terms thereafter) as specified in Madras Solar's QF-LGIA Article 2, or such substitute interconnection agreement the Commission may order.

If the Commission reaches the Sections 210 and 211 application, PGE's existing interconnection studies and available form contracts should be used to expedite the interconnection. The Commission should direct that the interconnection configuration studied and contained in the Madras Solar's QF-LGIA should be used because there is no need for further delay with additional studies. However, if the Commission acts under FPA Sections 210 or 211 to require any further interconnection or transmission agreements with the Tribes, the interconnection would certainly be FERC-jurisdictional because "an electric utility [, the Tribes,] interconnecting

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[96] Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 4.2 ("Transmission Provider shall provide Network Resource Interconnection Service for the Large Generating Facility at the Point of Interconnection.").

[97] *See* Order No. 807, 150 FERC ¶ 61,211, P 104 ("An applicant may consolidate the applications for the Commission's consideration.").

with a QF does not purchase all of the QF's output[.]"[98] Thus, Madras Solar submits that PGE's FERC-jurisdictional LGIA offered in its OATT should be utilized if the Commission declines to issue the requested declaratory order and instead acts under FPA Sections 210 or 211.[99] There are important distinctions between Madras Solar's QF-LGIA and PGE's OATT LGIA—most notably the requirement in PGE's OATT LGIA that PGE must refund to Madras Solar all of the network upgrade costs it finances, which exceed $23 million in this case.[100]

Finally, the Commission should direct expedited execution of PGE's OATT LGIA without requiring Madras Solar to restart the interconnection process. Madras Solar relied on PGE's jurisdictional position in executing the QF-LGIA—which contains significant benefits to PGE—and Madras Solar should not be penalized with further delay of restarting with a new queue position if the Commission determines PGE's jurisdictional position was incorrect. The QF-LGIA itself and Commission precedent support a seamless transition to the FERC-jurisdictional LGIA without delay in this circumstance.[101] Because the interconnection studies have already been conducted and the upgrades necessary have been identified, there should be no issues of material fact. The Commission should therefore order the interconnection on an expedited basis without

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98 Order No. 2003, 104 FERC ¶ 61,103, at P 813.

99 *See City of Goose Creek v. S.C. Pub. Serv. Auth. Goose Creek*, 172 FERC ¶ 61,165, PP 120-122 (Aug. 27, 2020) (granting FPA Section 210 application and stating, "we direct the parties to negotiate whether any deviation from Santee Cooper's unfiled OATT is appropriate"); *Nev. Power Co.*, 110 FERC ¶ 61,029, P 21 (Jan. 21, 2005) (approving use of pro forma OATT for FPA Section 210 interconnection and explaining that the "order requested here would not shift costs to other customers because transmission service will be provided under the rates, terms, and conditions of Nevada Power's Open Access Transmission Tariff").

100 Exhibit 17, PGE's OATT LGIA, at Art. 11.4; *see also* Order No. 2003, 104 FERC ¶ 61,103, at PP 675-676, 693-696 (interconnecting generator entitled to refund of network upgrades it finances).

101 *See* Exhibit 6, Madras Solar-PGE QF-LGIA, dated April 8, 2021, at Art. 2.3.4 (stating that in the event the QF-LGIA is no longer subject to the OPUC's jurisdiction, PGE and Madras Solar shall execute a replacement QF-LGIA pursuant to PGE's OATT); Order No. 2003, 104 FERC ¶ 61,103, at P 815 (stating that when state-jurisdictional QF interconnection agreement becomes FERC-jurisdictional "it would be unreasonable for a Transmission Provider to require the former QF to join the interconnection queue").

holding an evidentiary hearing.[102]

B. FPA Section 210's Requirements Are Met.

FPA Section 210 provides, in relevant part:

> "Upon application of any electric utility … or qualifying small power producer, the Commission may issue an order requiring (A) the physical connection of . . . the transmission facilities of any electric utility, with the facilities of such applicant, (B) such action as may be necessary to make effective any physical connection . . . or (D) such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraph (A) or (B)."[103]

An application under section 210 must show that the interconnection is: in the public interest; would either encourage conservation of energy or capital, optimize efficient use of facilities and resources, or improve reliability; and meets the requirements of Section 212.[104] These requirements are met here.

1. Section 210 Jurisdiction Exists.

a. Madras Solar qualifies as an "electric utility" and a "qualifying facility."

An "electric utility" is defined as "a person or Federal or State agency (including an entity described in section 201(f)) that sells electric energy."[105] Because Madras Solar intends to sell electric energy through the proposed interconnection, it qualifies as an "electric utility" for purposes of applications under FPA Sections 210 and 211.[106] Similarly, Madras Solar has self-certified its proposed facility as a QF in FERC Docket No. QF17-1497 and is thus also eligible to

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102 *THSI bn, LLC*, 185 FERC ¶ 61,032, P 63 (Oct. 19, 2023) (finding no need for evidentiary hearing where no disputed material facts existed on Section 210's criteria).

103 16 U.S.C. § 824i(a)(1).

104 16 U.S.C. § 824i(c).

105 16 U.S.C. § 796(22).

106 *Alternative Transmission Inc*., 182 FERC ¶ 61,163, P 11 (March 16, 2023); *THSI bn, LLC*, 185 FERC ¶ 61,032, at P 52; *see also Am. Mun. Power-Ohio v. Dayton Power & Light Co*., 67 FERC ¶ 61,373, at 62,273 (June 22, 1994) ("with respect to section 210, Congress expressly contemplated applications for interconnections with planned facilities").

apply under FPA Section 210 as a "qualifying small power producer."[107]

b. PGE and the Tribes are each an "electric utility."

PGE is subject to FPA Section 210 as an electric utility, and is indeed even a fully regulated public utility. As explained below, the Tribes are also an "electric utility" subject to FPA Section 210 because they "sell[] electric energy."[108]

Pursuant to their rights under the O&O Agreement, the Tribes appear to have consistently delivered their share of the Pelton-Round Butte Project's electric energy over the generator tie lines, including the Pelton-Round Butte 230 kV line, for sale to PGE at the Round Butte Substation.[109] PGE's 2023 FERC Form No. 1 reports that the Tribes, through Warm Springs Power Enterprises, sold 625,094 MWh to PGE in 2023 for $47,279,198, as well as $6,000,000 in demand charges.[110] The Tribes "sell[] electric energy"[111] and are thus subject to FPA Section 210 with respect to the transmission assets they co-own.

To be clear, the Tribes' status as a federally recognized Native American tribe with sovereign authority over its reservation does not affect their status as an electric utility under Section 210 (or a transmitting utility under Section 211). The law is well settled that federal statutes of general applicability, and the Federal Power Act in particular, apply to tribes

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107 16 U.S.C. § 824i(a)(1).

108 16 U.S.C. § 796(22).

109 *See* Exhibit 16, O&O Agreement at Art. 5 (entitling Tribes to sell their share of project output to PGE); *Id.* at Art. 5.1(a) ("The Tribes Allocation shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard"); *id.* at Art. 5.8 ("The [Pelton Regulating Dam] Net Output shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard."); Exhibit 15, Excerpt of PGE's 2023 Q4 FERC Form No. 1 (stating, "PGE has agreed to purchase 100% of the [the Tribes'] share of the project's output under a Power Purchase Agreement (PPA) through 2040.").

110 Exhibit 15, Excerpt of PGE's 2023 Q4 FERC Form No. 1 at Purchased Power (Account 555), lines 132-133.

111 16 U.S.C. § 796(22).

notwithstanding tribal governments' inherent sovereignty.[112] The Commission has thus applied the Federal Power Act's requirements to tribes,[113] including the Tribes here through their federal hydropower license.

And, as with federal agencies, tribes' exemption as public utilities under FPA Section 201(f) does not affect their status under FPA Sections 210 and 211. The Commission has ruled that tribes in general are not "public utilities," as defined in FPA Section 201(e), whose power marketing activities are regulated under the FPA, because they are analogous to federal agencies exempt under FPA Section 201(f).[114] The Tribes here obtained such an exemption order for Warm Springs Power Enterprises, which was described as an enterprise wholly owned by the Tribes for the purpose of managing its interests in the Pelton-Round Butte Project.[115] However, FPA Section 201(b)(2) makes clear that: "Notwithstanding section 201(f), the provisions of sections 210, 211, [and] 212 . . . shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions[.]."[116] Thus, entities exempt from regulation as public utilities under Section 201(f), including the Tribes, are still subject to Section 210 if they sell electric energy, as well as Section 211 if they meet the definition of "transmitting utility" (discussed below).[117] Similarly, granting an order under

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112 *See Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765, 787-88 & n.30 (1984) (FPA applies to tribes)*; Fed. Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 116-18 (1960) (same); *see also Donovan v. Coeur d' Alene Tribal Farm*, 751 F.2d 1113, 1115-18 (9th Cir. 1985) (Occupational Safety and Health Act); *Confederated Tribes of Warm Springs Reservation of Oregon v. Kurtz*, 691 F.2d 878, 880-83 (9th Cir. 1982), *cert. denied*, 460 U.S. 1040 (1983) (federal excise taxes); *Navajo Tribe v. NLRB*, 288 F.2d 162, 164-65 (D.C. Cir.), *cert. denied*, 366 U.S. 928 (1961) (National Labor Relations Act).

113 *See Eastern Band of Cherokee Indians*, 41 FERC ¶ 61,197 (Nov. 20, 1987) (holding that a tribe must obtain a license for a proposed hydroelectric project on the tribe's reservation).

114 *Confederated Tribes of the Warm Springs*, 93 FERC ¶ 61,182, at 61,598-61,599 (Nov. 21, 2000).

115 *Id*. at 61,598-61,599.

116 16 U.S.C. § 824(b)(2).

117 *See Western Area Power Admin*., 187 FERC ¶ 61,164, P 2 (June 12, 2024) (explaining that although not a public utility, "WAPA is, however, a transmitting utility subject to sections 210 through 213 of the FPA"); *New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and*

Sections 210 and/or 211 against a non-public utility does not convert that entity into a public utility.[118]

Notably, the Commission's order exempting Warm Springs Power Enterprises from regulation as a public utility expressly noted that the Tribes "will own certain transmission facilities" transferred to them by PGE, and it states that the order does not address whether the Tribes are a "transmitting utility" under Section 211.[119] This further confirms that because the Tribes meet the criteria to be subject to FPA Sections 210 and 211, they are subject to interconnection and transmission orders, to the full extent necessary to facilitate Madras Solar's interconnection.[120]

2. Section 210(c)(1)'s public interest test is met.

The Commission has consistently found that "[n]ew interconnections generally meet the public interest test by making transmission service available to new generators and, thus increasing the supply of electricity and improving competition."[121] That reasoning applies here because the

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Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC-714, Order No. 558-A, 65 FERC ¶ 61,324, at 62,451-62,455 (Dec. 9, 1993) (explaining the utilities that are exempt from regulation as public utilities are still subject to FPA Sections 210 and 211 to the extent they meet FPA's definitions of "electric utility" and "transmitting utility"); *see also THSI bn, LLC*, 185 FERC ¶ 61,032 at P 53 (proposed order directing Arizona Electric Power Cooperative ("AEPCO"), a non-public utility, to interconnect a proposed solar project and explaining, "AEPCO is an electric utility because it sells power from the Apache Generating Station.").

[118] *Alternative Transmission Inc*., 182 FERC ¶ 61,163, at PP 23-25.

[119] *Confederated Tribes of the Warm Springs*, 93 FERC ¶ 61,182, at 61,599 n. 9; *see also Hoopa Valley Tribe*, 174 FERC ¶ 61,102, P 23 (Feb. 18, 2021) ("Although we find Petitioners are exempt public utilities pursuant to section 201(f) of the FPA, they are not exempt from every provision of Part II of the FPA.").

[120] The Tribes asserted in response to Madras Solar's request for interconnection and/or transmission services that the Tribes are exempt from the FPA as an entity that sells less than 4,000,000 MWh of electric energy. Exhibit 13, Warm Springs Power and Water Enterprises' Letter Rejecting Madras Solar Interconnection and Transmission Services Request, dated June 24, 2024, at 1. However, the Tribes cited no legal authority for that proposition, and nothing in the FPA exempts entities selling less than 4,000,000 MWh of electric energy from orders under FPA Sections 210 or 211.

[121] *THSI bn, LLC*, 185 FERC ¶ 61,032, at P 56 (quoting *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251, P 36 (May 31, 2002)).

proposed interconnection would enable Madras Solar, a new generator, to interconnect and sell its net output under PURPA to PGE.

3. Under Section 210(c)(2), the interconnection would: (i) encourage conservation of energy or capital, (ii) optimize efficient use of facilities and resources, or (iii) improve reliability.

Only one of the three criteria in Section 210(c)(2) need be met, but here all three are met.[122] Indeed, in *City of Tacoma*, the Commission has ordered interconnection to a licensed hydropower project's transmission facilities over the licensee's objection after finding the proposal met "at least one of the three specified criteria."[123]

First, the interconnection will encourage conservation of capital by avoiding the need to build a duplicative, and likely more costly, 230 kV tie line several miles from the solar facility to PGE's Round Butte Substation. It will do so by using the pre-existing 230 kV hydropower tie line that passes near the proposed solar facility.

Second, for the same reason, the interconnection will optimize efficient use of facilities and resources. The proposed use of an existing generator tie line meets that standard by avoiding the need for a duplicative line, which would be "redundant and inefficient," and by allowing for use of existing capacity on the existing line, which will "optimize efficient use of the generator tie line."[124]

Third, the interconnection would improve reliability because PGE's interconnection studies incorporated into the QF-LGIA require extensive network upgrades, including a fixed series capacitor, that will provide a system benefit to PGE's transmission system far beyond the

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122 16 U.S.C. 824i(c)(2).

123 118 FERC ¶ 61,202 at P 24.

124 *Mt. Breeze Wind, LLC*, 170 FERC ¶ 61,228, P 14 (March 19, 2020); *see also THSI bn, LLC*, 185 FERC ¶ 61,032, P 57 (holding that avoiding duplicative facilities promotes efficiency); *City of Goose Creek*, 172 FERC ¶ 61,165, at PP 114-115 (same).

interconnection facilities.[125] As the Commission has consistently held, such network upgrades provide a system benefit to all users of the system.[126] Indeed, PGE has indicated that the fixed series capacitor is a contingent facility in another customer's interconnection agreement,[127] which necessarily means it will be a beneficial system expansion that will support future generation interconnection to the grid in this renewable resource rich area.

C. FPA Section 211's Requirements Are Met.

Section 211 provides that "any electric utility, Federal power marketing agency, or any other person generating electric energy for sale or resale" may apply to the Commission for an order requiring a "transmitting utility" to provide transmission services, including enlargement of facilities if necessary.[128] A Section 211 applicant must first make a good faith request for service to the transmitting utility, specifying details as to the requested transmission services at least 60 days before filing an application with the Commission.[129] As applicable here, the Commission may grant an application under section 211 if the application is in the public interest, will not unreasonably impair reliability, will not alter certain types of competitive relationships, and meets the requirements under section 212.[130] These criteria are met here.

1. Section 211 Jurisdiction Exists.

a. Madras Solar qualifies as an "electric utility."

As noted above, Madras Solar qualifies as an electric utility qualified to apply for

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125 *See Mt. Breeze Wind, LLC*, 170 FERC ¶ 61,228, P 15 (relying on transmission provider's system impact study to conclude no adverse impact to reliability).

126 *See Entergy Services, Inc. v. FERC*, 319 F3d 536, 543-44 (D.C. Cir. 2003) (affirming FERC's "long-held view of the benefits of expansion and the role of network system upgrades"); *Western Mass. Electric Co.*, 66 FERC ¶ 61,167, at 61,335 (Feb. 3, 1994) ("the addition represents a system expansion used by and benefitting all users due to the integrated nature of the grid.").

127 Exhibit 9, PGE's Letter Re LGIA Milestones, dated February 6, 2024, at 4.

128 16 U.S.C. § 824j(a).

129 16 U.S.C. § 824j(a); 18 C.F.R. § 2.20.

130 16 U.S.C. § 824j(a)-(c).

transmission services under FPA Section 211.[131]

b. PGE and the Tribes are each a "transmitting utility."

The FPA defines a "transmitting utility" as "an entity (including an entity described in section 201(f)) that owns, operates, or controls facilities used for the transmission of electric energy—(A) in interstate commerce; (B) for the sale of electric energy at wholesale."[132] As noted above, PGE is a public utility and thus also a "transmitting utility," and while the Tribes may not be a public utility, that does not affect their status as a "transmitting utility" subject to FPA Section 211.[133]

There is no question the Tribes "own" facilities used for transmission of electric energy in interstate commerce through their ownership share of the Pelton-Round Butte Project's generator tie lines.[134] Further, based on available evidence, the Tribes-owned transmission facilities are indeed "used . . . for the sale of electric energy at wholesale."[135] The available evidence demonstrates that the Tribes have themselves consistently sold their share of the Pelton-Round Butte Project's electric energy to PGE at the Round Butte Substation pursuant to the O&O Agreement and related power purchase agreements, and they apparently do so by delivering the energy over the co-owned transmission facilities—including the Pelton-Round Butte 230 kV line at issue.[136] PGE also likely uses the co-owned transmission facilities to transmit its share of the hydropower project's electric energy for purposes of wholesale sales. Thus, the Tribes-owned transmission facilities are used to sell electric energy at wholesale, and the Tribes are a "transmitting utility" subject to FPA Section 211.

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131 *See supra* Section V.B.1.a.
132 16 U.S.C. § 796(23).
133 *See supra* Section V.B.1.b.
134 16 U.S.C. § 796(23)(A).
135 16 U.S.C. § 796(23)(B).
136 *See supra* Section V.B.1.b.

2. Good Faith Request: Madras Solar made a good faith request for transmission services.

Madras Solar submitted its interconnection service request to PGE under PGE's interconnection process. Doing so was consistent with this Commission's guidance that a request to jointly owned facilities "should go to the Commission-jurisdictional co-owner, *who must then work with its non-jurisdictional co-owner to coordinate the study process*."[137] However, after it appeared the Tribes may believe a separate interconnection or transmission services agreement is necessary with them, Madras Solar also submitted a separate good faith request for interconnection and transmission services directly to the Tribes, which included all information specified in 18 C.F.R. § 2.20, over 60 days prior to filing this Section 211 application.[138]

3. Public Interest: The proposed transmission services are in the public interest.

The proposed transmission services, if necessary, are in the public interest for the same reason that the proposed interconnection is in the public interest. As with interconnection service, the Commission has consistently held that "the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers."[139]

4. Reliability: The proposed transmission service will not unreasonably impair reliability.

Consistent with Section 211(b), Madras Solar's proposed interconnection and any necessary transmission services would not "unreasonably impair the continued reliability of electric systems affected[.]"[140] This is confirmed by PGE's interconnection studies that identified

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137 *See* Order No. 2003-A, 106 FERC ¶ 61,220 at P 755 (emphasis added).

138 Exhibit 12, Madras Solar's Letter and Good Faith Interconnection and Transmission Service Request to Tribes, dated June 7, 2024.

139 *THIS bn, LLC*, 185 FERC ¶ 61,032, at P 56 (quoting *Nev. Power Co.*, 110 FERC ¶ 61,029 at P 17).

140 16 U.S.C. § 824j(b).

all upgrades necessary to reliably interconnect the solar facility and ensure network resource transmission service could be supported after PGE takes title to the solar facility's net output.[141]

5. Effect on Contracts or Rate Schedules: Section 211(c) does not preclude transmission service.

Section 211(c) proscribes transmission service requiring the transmitting utility to deliver electric energy that "replaces any amount of electric energy" provided to the applicant.[142] Madras Solar does purchase any energy from PGE or the Tribes that would be displaced by the proposed transmission services, and thus this section is inapplicable.

D. Section 212: The Proposed Interconnection and, If Necessary, Transmission Services Will Comply with Section 212.

Madras Solar requests that the Commission issue a proposed order in this proceeding as soon as possible if it reaches the Section 210 and Section 211 issues. The proposed order would meet the requirements of Section 212(c)(1).[143] As discussed above (*supra* Section V.A.), Madras Solar respectfully requests the proposed order be based on the existing interconnection studies and PGE's FERC-jurisdictional OATT LGIA.

VI. Amendment of Hydropower License: The Commission Should Exercise Its Reserved Licensing Authority to Initiate Amendment of the Hydropower License.

Finally, regardless of whether the Commission determines Madras Solar's right to interconnect arises under its existing QF-LGIA or under FPA Sections 210 and 211, the

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141 *See Mt. Breeze Wind, LLC*, 170 FERC ¶ 61,228, P 15 (relying on transmission provider's system impact study to conclude no adverse impact to reliability); *see also* Exhibit 3, PGE's System Impact Re-Study, dated July 12, 2019, at 5 ("SIS includes powerflow, short circuit, transient stability, and voltage stability analysis in conformance with the PGE OATT."); *id.* at 19 ("The results of the power flow analysis, short circuit analysis, transient stability analysis, and the voltage stability analysis show that the Preliminary Plan of Service for NRIS meets all NERC and WECC requirements. Because no additional Network Upgrades have been identified as being necessary, the Preliminary Plan of Service for NRIS is recommended as the Proposed Plan of Service for NRIS.").

142 16 U.S.C § 824j(c).

143 16 U.S.C § 824k(c)(1).

Commission should provide notice of intent to amend the Pelton-Round Butte Project's license. Specifically, as it did in *City of Tacoma*,[144] the Commission should exercise reserved authority under the Pelton-Round Butte Project's license to initiate proceedings to amend the hydropower license to the extent necessary to allow Madras Solar's interconnection.

As explained above, the sole impediment to moving forward with construction of the interconnection is the Tribes' belief that they have a unilateral veto right over the interconnection by virtue of their rights as co-owner and co-licensee of the Pelton-Round Butte Project and PGE's related refusal to apply for amendment to the license absent the Tribes' consent. Notably, PGE has filed non-project use amendments "on behalf of" the non-project use proponent in the past, which is consistent with the Commission's policy that such amendments are technically filed on behalf of the non-project use proponent, not the licensee itself.[145] Nevertheless, PGE and the Tribes have clearly expressed that they will not do so in this case.

PGE and the Tribes' refusal to agree to an amendment of the hydropower license is premised on their mistaken belief that "FERC has no authority under the Federal Power Act to approve any such amendment of the Project License without the Tribes' consent[,]" due to FPA Section 6.[146] However, as explained below, Section 6 is not a bar to amendment of the Pelton-Round Butte Project's license to accommodate Madras Solar's interconnection for two independent reasons.

First, FPA Section 6 does not bar amendment of the license because the proposed interconnection will not be a substantial alteration of the license. FPA Section 6 provides that a license "may be altered . . . only upon mutual agreement between the licensee and the Commission

144 118 FERC ¶ 61,202 at PP 33-36.

145 *Portland Gen Elec*., 159 FERC ¶ 62,357, P 1 (June 29, 2017) (requesting non-project use for water in-take structure "[o]n behalf of the Oregon Department of Fish and Wildlife").

146 Exhibit 14, PGE's Letter, dated August 6, 2024, at 2 (citing 16 U.S.C. § 799).

after 30 days public notice."[147] However, as the D.C. Circuit has explained, "Section 6, like most other statutory provisions, must incorporate some common sense limits."[148] Otherwise, Section 6 could serve to "undermine, perhaps significantly, the FPA's broader objective[.]"[149] Section 6 "was not meant to be a bar to the licensing of new projects where they might minimally interfere with existing projects, lest the mere fact that a project exists prevent all other new project development."[150] Thus, the Commission has explained that "Section 6 of the FPA requires the consent of a licensee *only with respect to a substantial alteration of the license*."[151]

The determination of whether an alteration is "substantial" is made on a case-by-case basis considering the physical alterations to existing project works and the impacts on the operation of the project.[152] For example, the Commission found that no substantial alteration of a project's license would exist for installation of a penstock under the existing project's power canal where outages at the existing project could be coordinated during construction, and where there would be no interference with the existing project once constructed.[153] And in *City of Tacoma* the

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147 16 U.S.C. § 799.

148 *Pac. Gas & Elec. v. FERC*, 720 F.2d 78, 89 (D.C. Cir. 1983) (*hereafter* "*PG&E*").

149 *Id.*; *see also id.* at 90 (explaining, "Small encroachments on a license, comparable in their adverse impact to variations in conditions that investors might expect from other causes such as, for example, annual fluctuations in water supply, should be within FERC's authority to grant in implementing the design of Congress to promote, at the same time, development and stable investment incentives.").

150 *Central Nebraska Public Power & Irrigation District*, 52 FERC ¶ 61,339, at 62,348-62,349 (Sept. 27, 1990).

151 *Weber Basin Water Conservancy Dist*., 50 FERC ¶ 61,409, 62,263 (March 23, 1990) (emphasis added).

152 *LinkPast Sols., Inc.*, 188 FERC ¶ 61,056, P 11 (July 25, 2024).

153 *Weber Basin Water Conservancy Dist*., 50 FERC ¶ 61,409, 62,263 & n. 13; *see also Howard W. Blair*, 20 FERC ¶ 61,092, at 61,194 (July 23, 1982) (rejecting licensee's objection to proposed use of water from its licensed project's fish water release pipe that would not affect generation at the licensed project); *Fluid Energy Sys., Inc.*, 24 FERC ¶ 61,298, at 61,615 (Sept. 20, 1983), *reh'g denied*, 25 FERC ¶ 61,404 (Dec. 20, 1983) (no substantial alteration for tailwater encroachment that reduced the existing project's annual generating capacity by approximately 0.3%); *but see Niagara Mohawk Power Corp*., 29 FERC ¶ 61,005, at 61,010 (Oct. 2, 1984) (substantial alteration found for modifications to the existing project's headgate structure, dam abutment repairs, and construction of a powerhouse and penstock that would prevent all flows from entering existing project's plant during construction).

Commission has previously suggested that no substantial alteration of a license would occur in the case of reconfiguration to a licensed project's transmission facilities alone for purposes of accommodating an interconnection under FPA Section 210.[154] The reconfiguration of the hydropower project's transmission assets in *City of Tacoma* was significant—extending one licensed project's primary transmission line 7.5 miles to a new substation and interconnecting another licensed project's primary transmission line with a new primary transmission line extending 6.3 miles to a new substation.[155]

In this case, there is no substantial alteration of the license. Significantly, the proposed interconnection will cause no impact on use of the waterway or availability of water for the hydropower plant's power production or environmental compliance.[156] While the hydropower project's generator tie line and certain other transmission facilities will be reconfigured, the interconnection will be supported by network upgrades required by PGE to ensure Madras Solar's facility will be safely interconnected and designated as a network resource. Network resource interconnection service "requires the Transmission Provider to undertake the Interconnection Studies and Network Upgrades needed to integrate the Generating Facility into the Transmission System in a manner comparable to that in which the Transmission Provider integrates its own generators to serve native load customers."[157] The interconnection of a new network resource to grid is "comparable in [its] adverse impact to variations in conditions that investors [in a

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154 118 FERC ¶ 61,202, at PP 31-33 & nn. 18-19 ("In fact, it is not clear whether, or to what extent, implementation of the new interconnections would require alterations to the licenses.").

155 *Id.* at PP 2-7; *see also id.* at PP 37-47 (concluding the newly proposed transmission lines would be primary lines and thus part of the licenses).

156 Exhibit 1, Declaration of Erik Steube at ¶ 10.

157 Order No. 2003, 104 FERC ¶ 61,103, at P 754; *see also id.* at P 768 ("Network Resource Interconnection Service entitles the Generating Facility to be treated in the same manner as the Transmission Provider's own resources for purposes of assessing whether aggregate supply is sufficient to meet aggregate load within the Transmission Provider's Control Area").

hydropower project] might expect from other causes" even without the proposed license amendment associated with Madras Solar's interconnection—and thus is not a substantial alteration of the license.[158] In sum, Section 6's consent requirement is not implicated at all here.

Second, even if the Commission finds a substantial alteration, FPA Section 6 does not bar the Commission from ordering an interconnection under its reserved licensing authority, and the Commission should do so in this case. The Commission has previously addressed this same issue in *City of Tacoma*.[159] Just as here, *City of Tacoma* involved licensees that refused to allow interconnection to their project's licensed transmission facilities and thus forced the interconnection proponent to apply to the Commission for interconnection under FPA Section 210. The Commission first found that the proposed interconnection met Section 210's requirements, and then proceeded to reject the licensees' reliance on FPA Section 6.[160] The Commission explained, "even assuming . . . that the proposed interconnection would 'substantially' alter the Irrigation Districts' licensed project works, *FPA Section 6 does not provide the [licensees] with a unilateral veto over the interconnection*, as they contend."[161] That is because the Commission "includes standard conditions in its licenses that reserve the Commission's authority to require reasonable changes to the license after notice and opportunity for a hearing."[162] This "reservation of authority is a well-recognized means of obtaining the licensees' consent to modifications that may be necessary during the term of the license."[163]

Specifically, in *City of Tacoma*, the Commission invoked Standard License Articles 9 and 10, which provide:

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158 *PG&E*, 720 F.2d at 90.
159 118 FERC ¶ 61,202.
160 *Id*. at PP 24-36.
161 *Id*. at P 33 (emphasis added).
162 *Id*.
163 *Id*.

> *Article 9.* The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.
>
> *Article 10.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.[164]

Although "the Commission previously ha[d] not used these standard articles to order modifications to a project that would be necessary to implement an interconnection order issued under section 210," the Commission found that "the language of these articles is certainly broad enough to allow the Commission to do so."[165] The Commission then explained, "based on the section 210 findings this order makes, we preliminarily conclude that, in the interest of power, the licensees should coordinate electrically the transmission of their projects' power with the Cities' interconnection facilities."[166] Accordingly, the Commission issued an order requiring the interconnection under FPA Section 210 and provided notice to the licensees of intent to invoke the Commission's reserved authority under standard license Articles 9 and 10 "to the extent necessary to require the licensees to permit the interconnection."[167]

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164 *Id*. at P 34 (quoting, *Standardized Conditions for Inclusion in Preliminary Permits and Licenses Issued Under Part I of the Federal Power Act*, 54 FPC ¶ 1792, at Form L-2 (Oct. 31, 1975)).

165 *Id*. at P 35 (citing *Dept. of the Interior v. FERC,* 952 F.2d 538, 546-48 (D.C. Cir. 1992); *PG&E,* 720 F.2d at 83-84; *California v. Federal Power Commission,* 345 F.2d 917, 921-25 (9th Cir. 1965); *Cascade Power Company,* 74 FERC ¶ 61,240, at 61,822 (March 1, 1996); *Philadelphia Corporation v. Sandy Hollow Power Company,* 61 FERC ¶ 61,045 (Oct. 8, 1992)); *see also Dept. of the Interior,* 952 F.2d at 547 ("As contemplated by the plain language of the license clause, any party, including petitioners here, may petition FERC to enforce the license conditions or exercise its retained authority under the reopener clause.").

166 *City of Tacoma*, 118 FERC ¶ 61,202, at P 35.

167 *Id.* at P 1; *see also id.* at P 36 ("we hereby give notice, pursuant to standard Articles 9 and 10 of the licenses . . . of our preliminary conclusions, and we are affording an opportunity to comment on this proposed use of our reserved authority.").

As it did in *City of Tacoma*, the Commission should provide notice of intent to exercise its reserved authority to amend the Pelton-Round Butte Project's license to the extent necessary to permit Madras Solar's proposed interconnection. Like the license in *City of Tacoma*, the Pelton-Round Butte Project's license also incorporates Standard Articles 9 and 10.[168] Whether Madras Solar's rights to interconnect exist pursuant to the state-jurisdictional QF-LGIA or pursuant to an FPA Section 210 and/or Section 211 order the Commission issues here, neither the Tribes nor PGE have "a unilateral veto over the interconnection, as they contend."[169] The Commission's exercise of its reserved licensing authority is necessary here to reaffirm that hydropower licensees may not "unilaterally" deny open access to their licensed transmission facilities,[170] and that public utilities may not "partner" with non-public utilities to frustrate interconnection by competing generators, such as Madras Solar.[171]

VII. Request for Expedited Action

Madras Solar respectfully requests expedited action by the Commission. Expedited action is necessary because PGE's insistence that Madras Solar obtain the Tribes' consent and the Tribes' refusal to provide such consent has stalled development and now threatens the viability of the proposed solar facility. [**BEGIN CUI//PRIV]** [redacted]

168 *See* Relicensing Order, 111 FERC ¶ 61,450, at 62,928 (Ordering paragraph K, incorporating the "articles set forth in Form L-5, entitled 'Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States,' 54 FPC 1792, 1799 (October 1975)"); *see also Standardized Conditions for Inclusion in Preliminary Permits and Licenses Issued Under Part I of the Federal Power Act*, 54 FPC ¶ 1792, at Form L-5, Articles 9 & 10 (Oct. 31, 1975).

169 *City of Tacoma*, 118 FERC ¶ 61,202, at P 33.

170 *Id*. at PP 33 & 35.

171 *Nat'l Ass'n of Regulatory Util. Comm'rs*, 475 F.3d at 1281.

172 Exhibit 1, Declaration of Erik Stuebe, at ¶ 19.

[redacted] **[END CUI//PRIV]** PGE's letter dated February 6, 2024, asserts that Madras Solar has failed to meet the development milestones in the QF-LGIA.[174] Due to the delays and the need to resort to FERC for relief, Madras Solar provided PGE with notice of intent to suspend the QF-LGIA, as allowed by Article 5.16 of the QF-LGIA's plain terms, but PGE has not consented to the validity of Madras Solar's request to suspend the QF-LGIA.[175] **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

Thus, Madras Solar respectfully requests that the Commission issue its order as soon as possible. Additionally, to the extent that the Commission orders any further negotiations of the interconnection terms or other issues, Madras Solar requests that the Commission order expedited timeframes for such negotiations.[176]

VIII. Request for Privileged Treatment of Information

Pursuant to 18 C.F.R. § 388.112, Madras Solar requests privileged treatment with respect to certain material included in this petition, application, and exhibits, and it accordingly is submitting public and non-public versions of the petition, application, and exhibits with information for which privileged treatment is requested. Section 388.112(b)(1) of the Commission's regulations provides that "[a] person requesting that material be treated as

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173 **[BEGIN CUI//PRIV]** [redacted] **[END CUI//PRIV]**

174 Exhibit 9, PGE's Letter Re LGIA Milestones, dated February 6, 2024.

175 Exhibit 1, Declaration of Erik Stuebe at ¶ 19.

176 *See City of Tacoma*, 118 FERC ¶ 61,202, at PP 5 & 28 (ordering shortened period to negotiate final interconnection terms of 30 days to accommodate deadlines in related agreement and necessary construction timelines).

privileged information must include in its filing a justification for such treatment." The information that has been redacted or excluded from the public version of the petition, application, and exhibits relates to the terms and conditions of the Madras Solar-PGE power purchase agreement, which is subject to a non-disclosure agreement and includes commercially sensitive and/or proprietary material that would be exempt from disclosure under the Freedom of Information Act.[177]

Section 388.112(b)(2)(i) of the Commission's regulations provides further that "[i]f a person files material as privileged material in a complaint proceeding or other proceeding to which a right to intervention exists, that person must include a proposed form of protective agreement with the filing." Accordingly, Madras Solar has included a proposed protective agreement ("Protective Agreement"), filed contemporaneously herewith. Madras Solar notes that the Protective Agreement is a version of the Commission's Model Protective Order, as adopted in Docket No. AD20-12, with the references to oil pipeline proceedings removed for purposes of this case.

Under the Protective Agreement, Madras Solar will provide the non-public version of this petition, application, and exhibits to eligible "Reviewing Representatives," of persons or entities that have filed a motion to intervene or a notice of intervention, three business days after receiving a written request that includes: (1) an executed Protective Agreement (to the extent not yet entered into by the requesting party), (2) executed non-disclosure certificates for each such Reviewing Representative and, (3) a copy of the motion to intervene or notice of intervention. Any non-public materials are to be marked "**CONTAINS PRIVILEGED INFORMATION**" and "**DO NOT RELEASE**."[178]

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177 5 U.S.C. § 552; 18 C.F.R. § 388.107(d).

178 18 C.F.R. § 388.112(b).

In addition, in accordance with the Commission's notice on labelling of non-public information, each page of the non-public version of this filing is marked "**CUI//PRIV**."[179]

IX. Conclusion

For the reasons set forth above, Madras Solar respectfully requests the Commission grant the relief as requested in the Introduction and Summary and take such other action necessary to enable Madras Solar's proposed interconnection.

Dated: September 4, 2024.

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[179] *See Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*, 83 Fed. Reg. 28,631 (June 20, 2018).

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the public version of the foregoing document, and its exhibits and attachments, to be served upon the following corporate officials listed on the Commission's website and other representatives of Portland General Electric Company, as well as the following representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon, Warm Springs Power and Water Enterprises, and the Public Utility Commission of Oregon, as follows:

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PUBLIC VERSION

I further certify that I have this day caused the public version of the foregoing document, and its exhibits and attachments, to be served upon the individuals listed on the Commission's official service list for Docket No. P-2030, as follows:

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Dated: September 4, 2024.

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Attorney for Madras PV1, LLC

EXHIBIT 1

EXHIBIT 2

PGE-Tribes Ownership & Operation Agreement, dated Jan. 1, 2002

OWNERSHIP AND OPERATION AGREEMENT

FOR THE

PELTON AND ROUND BUTTE DAMS AND GENERATING FACILITIES

BY

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

AND

PORTLAND GENERAL ELECTRIC COMPANY

Dated as of January 1, 2002
12:15 a.m.

EXHIBIT 2

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 2
1.1 Definitions. 2
1.2 Interpretations. 7
ARTICLE II OWNERSHIP 8
2.1 Initial Ownership. 8
2.2 Options of the Tribes to Increase Ownership Share. 8
2.3 Changes in Ownership Share. 8
2.4 Miscellaneous Ownership Rights and Obligations. 8
2.5 Round Butte Switching Station 230 kV Main Bus. 9
ARTICLE III OPERATION 9
3.1 Operator. 9
3.2 Operating Committee and Operating Decisions. 17
3.3 Operating Trust Account and Payment of Costs of Operation. 21
3.4 Reimbursement for Advances. 22
3.5 Taxes. 22
3.6 Operations and Capital Additions Budgets. 22
3.7 Accounting. 23
3.8 Certain Costs and Claims Treated as Costs of Operation. 23
3.9 Elective Capital Additions. 24
ARTICLE IV ALLOCATION OF PROJECT RIGHTS; SCHEDULING 24
4.1 Allocation of Project Rights 24
4.2 Scheduling Project Rights 25
ARTICLE V USE OF THE TRIBES' ALLOCATION AND RIGHTS TO SCHEDULE PROJECT RIGHTS; SALE OF REREGULATING DAM NET OUTPUT TO PGE 27
5.1 Sale of the Tribes' Allocation and the Tribes' Rights to schedule Project Rights. 27
5.2 Price. 27
5.3 Taxes. 27
5.4 Determination of Index Value to be Used to Calculate Market Value. 27
5.5 Determination of Timing of PGE Purchases from the Tribes 28
5.6 Determination of Market Value by Application of Index Values to PGE Purchases from The Tribes. 29
5.7 Election of Tribes Not to Sell Tribes' Allocation to PGE. 29
5.8 Sale by the Tribes to PGE of Pelton Reregulating Dam Net Output. 29
5.9 Election of Tribes Not to Sell PRD Net Output to PGE. 29
5.10 No Prohibition of Alternative Sales of Tribes' Allocation and PRD Net Output to PGE. 30
5.11 Power Purchase Agreements 30
5.12 Acquisition Loan 30
5.13 Repayment of Acquisition Loan. 30
5.14 Reserve Account. 31
ARTICLE VI MUTUAL INDEMNIFICATION; LIMITATION OF OWNERS' LIABILITY .. 31
6.1 Mutual Indemnification by Owners. 31
6.2 Exclusion of Liability for Certain Categories of Damages 32
ARTICLE VII WAIVER OF IMMUNITY; DISPUTES 33

EXHIBIT 2

7.1 Waiver of Immunity 33
7.2 Choice of Laws. 34
7.3 Dispute Resolution. 34
7.4 Limitations on Recourse. 35
ARTICLE VIII DAMAGE TO PROJECT; END OF PROJECT 36
8.1 Damage to the Project. 36
8.2 End of the Project. 37
ARTICLE IX TERM AND TERMINATION 37
9.1 Term. 37
9.2 Termination. 37
ARTICLE X DEFAULT AND REMEDIES 38
10.1 Default 38
10.2 Remedies. 38
ARTICLE XI INSURANCE 39
11.1 Project Property and Equipment. 39
11.2 Workers' Compensation, General Liability and Automobile Liability. 39
11.3 Consequential Damages. 40
11.4 Primary Insurance. 40
11.5 Costs of Operation. 40
11.6 Coverage to be Maintained by Owners 40
11.7 Waiver of Subrogation. 41
11.8 Status of Insurance. 41
11.9 Supplemental Insurance. 41
11.10 Election to Purchase Separate Coverage 41
ARTICLE XII ASSIGNMENTS AND TRANSFERS 42
12.1 Assignments and Transfers. 42
12.2 Right of First Refusal Upon Sale by PGE. 43
12.3 Acceleration of Tribes' First Purchase Option and Second Purchase Option. 45
ARTICLE XIII MISCELLANEOUS 47
13.1 Effect of Force Majeure. 47
13.2 Mutual Covenants to Perform under Long-Term Global Settlement Compensation Agreement. 47
13.3 Attorney Fees and Litigation Expenses. 47
13.4 Notices. 47
13.5 Waivers. 48
13.6 No Reliance 49
13.7 Assumption of Risk. 49
13.8 Waiver of Defenses. 49
13.9 No Third-Party Beneficiaries. 49
13.10 Severability. 49
13.11 Independent Counsel 49
13.12 Entire Agreement. 50

EXHIBIT 2

Exhibit A	Operating Guidelines
Exhibit B:	Administrative and General Costs
Exhibit C:	Sample Calculations for Determination of Reconciliation Payments

EXHIBIT 2

This OWNERSHIP AND OPERATION AGREEMENT is dated as of January 1, 2002 12:15 a.m. (this "Agreement") and is by and between The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act including its governing body the Tribal Council (the "Tribes"), and Portland General Electric Company, an Oregon corporation ("PGE"). (The Tribes and PGE are each referred to individually herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378);

WHEREAS, the Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934;

WHEREAS, pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over tribal lands within the boundaries of the Warm Springs Indian Reservation of Oregon (the "Tribal Lands") as such reservation is described in that certain Treaty between the United States of America and the Tribes and Bands of the Middle Oregon executed June 25, 1855 (12 Stat. 963);

WHEREAS, PGE is an electric utility engaged in generating, transmitting and distributing electric energy;

WHEREAS, the Tribes and PGE were parties to the 1955 Agreement pursuant to which (a) the Tribes granted PGE certain easements and rights necessary to the construction and operation of (i) the Pelton Dam and the Round Butte Dam and the generation and transmission facilities associated with such dams and (ii) the Pelton Reregulating Dam, and (b) (i) the compensation to be paid to the Tribes by PGE for such easements and rights was established and (ii) certain rights of the Tribes, including the right of the Tribes to construct, operate and maintain generation facilities in the Pelton Reregulating Dam were also established or affirmed;

WHEREAS, pursuant to the 1955 Agreement and Project License No. 2030 granted by the Federal Power Commission (now FERC), (a) PGE constructed, operates and maintains (i) the Pelton Dam and the Round Butte Dam and the generation and transmission facilities associated therewith and (ii) the Pelton Reregulating Dam, and (b) the Tribes constructed, operate and maintain the generation facilities in the Pelton Reregulating Dam;

WHEREAS, the Tribes and PGE entered into a Long-Term Global Settlement and Compensation Agreement, dated as of April 12, 2000, among themselves and Interior (the "Long-Term Global Settlement and Compensation Agreement") in order to establish their respective rights with respect to Project No. 2030 and their activities related thereto, including but not limited to all Compensation payable to the Tribes in connection therewith;

EXHIBIT 2

WHEREAS, pursuant to the Long-Term Global Settlement and Compensation Agreement the Tribes have purchased from PGE an Undivided 33.33% Interest in the Pelton and Round Butte Facilities;

WHEREAS, the Tribes and PGE desire to enter into a long-term agreement regarding the ownership and operation of the Project which helps them mutually achieve long-term economic benefits from the Project while addressing appropriately natural resources impacted by the Project;

WHEREAS, the Tribes and PGE desire that such ownership and operation agreement foster close working relationships and cooperation between them, and sound decision-making by them, relative to the Project; and

WHEREAS, entering into this Agreement is required by the terms of the Long-Term Global Settlement and Compensation Agreement.

NOW THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions.

(1) Unless otherwise defined in this Agreement, terms defined in the Long-Term Global Settlement and Compensation Agreement shall have the same meanings when used herein as in such agreement. As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

(2) "Acquisition Loan" has the meaning set forth in Section 5.12.

(3) "Adjustment Amount" has the meaning assigned to that term in the Asset Purchase Agreement.

(4) "Agreement" has the meaning set forth in the introductory paragraph hereof.

(5) "Applicable Law" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(6) "Capacity" means the rate at which electrical energy can be generated, expressed in megawatts (MW).

(7) "Capital Additions" means additions, improvements and betterments to the Project.

(8) "Cause" has the meaning set forth in Section 3.1(f)(ii).

EXHIBIT 2

(9) "Claimable Event" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(10) "Claiming Party" has the meaning set forth in the definition of "Force Majeure."

(11) "Claims" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(12) "Costs of Capital Additions" means those costs incurred or to be incurred to effect Capital Additions.

(13) "Costs of Operation" means all costs attributable to the operation and maintenance of the Project, including administrative and general costs determined pursuant to Exhibit B and repairs, renewals and replacements necessary to assure design capability and reliability or that are required by any Governmental Authority. Costs of Operation shall not include either taxes based upon the income of either of the Owners or property taxes that are assessed exclusively on the property interests of only one of the Owners.

(14) "Cove Agreements" means (a) the Cove Replacement Agreement between PGE and PacifiCorp, dated as of June 2, 1961, pursuant to which PGE compensates PacifiCorp for inundation of PacifiCorp's Cove Project by the construction of the Pelton and Round Butte Facilities, (b) the Agreement between the United States Department of the Interior (Bureau of Reclamation), Pacific Power & Light Company and PGE dated June 2, 1961 whereby the Bureau of Reclamation became a beneficiary of the alternative power arrangements made in the Cove Replacement Agreement of the same date, (c) the Agreement Concerning Interconnection and Power Exchange dated as of November 1, 1963 and as amended June 27, 1974, between PGE and PacifiCorp and (d) the Round Butte/Cove Interconnection and Operation Agreement between PGE and PacifiCorp dated July 8, 1993.

(15) "Covered Claims" has the meaning set forth in Section 3.1(e)(iv).

(16) "Effective Budget" has the meaning ascribed to it in Section 3.6(a).

(17) "Effective Date" has the meaning set forth in Section 9.1.

(18) "Elective Capital Additions" means additions, improvements and betterments to the Project that are not required to assure design capability or reliability or that are not required by any Governmental Authority.

(19) "Energy" means kilowatt-hours (kWh).

(20) "Estimated Purchase Price" has the meaning assigned to that term in the Asset Purchase Agreement.

(21) "Force Majeure" means an event not anticipated as of the Effective Date which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the "Claiming Party"), and which by the exercise of due diligence the Claiming Party is unable to overcome in a commercially reasonable manner

EXHIBIT 2

or obtain or cause to be obtained a commercially reasonable substitute performance therefor. Events of Force Majeure include, but are not restricted to: wrongful or negligent acts of the other Party; acts of God; fire, civil disturbance; labor dispute or labor shortages; strikes; sabotage; action or restraint by court order or Governmental Authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such action or restraint); and inability after diligent application to obtain or maintain required permits, licenses, zoning or other required approvals from any Governmental Authority or other third-party Person whose consent is required as a condition to a Party's performance hereunder.

(22) "Governmental Authority" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(23) "Implementation Effective Date" has the meaning set forth in Section 5.7.

(24) "Indemnified Owner" has the meaning set forth in Section 6.1(a).

(25) "Indemnifying Owner" has the meaning set forth in Section 6.1(a).

(26) "Index Value" has the meaning set forth in Section 5.4.

(27) "Long-Term Global Settlement and Compensation Agreement" has the meaning set forth in the recitals hereof.

(28) "Market Value" has the meaning set forth in Section 5.6.

(29) "Net Generating Capability" means the total amount of Energy which the Project is capable of generating, due allowance being made for legal, regulatory and physical constraints then existing, less the amount used in the production thereof.

(30) "Net Output" means the net amount of Capacity and Energy produced by the Project from time to time under the operating conditions then existing, including periods when some or all of the Project may be inoperable. "Net Output" is net of station use and after depletions required by the Original License or the New FERC License, as applicable, and other agreements and obligations from time-to-time, including obligations to supply Capacity and/or Energy pursuant to the Cove Agreements.

(31) "Off-Peak Hours" has the meaning set forth in Section 5.4.

(32) "Off-Peak Index Value" has the meaning set forth in Section 5.4.

(33) "On-Peak Hours" has the meaning set forth in Section 5.4.

(34) "On-Peak Index Value" has the meaning set forth in Section 5.4.

(35) "Operating Committee" means the committee established pursuant to Section 3.2(a).

(36) "Operating Guidelines" means the Operating Guidelines for the Project attached hereto as Exhibit A (as they may be modified from time to time by the Operating Committee).

(37) "Operating Trust Account" means the bank account established by the Operator to receive and disburse funds pursuant to this Agreement as more specifically provided in Section 3.3(a).

(38) "Operator" means the entity appointed pursuant to Section 3.1 to operate the Project.

(39) "Owners" means PGE and the Tribes and their permitted successors and assigns, and any other Person that becomes a holder of an Ownership Share, by operation of law or otherwise, pursuant to the terms of this Agreement, provided, that no such Person shall succeed to or acquire the rights provided to Owners under this Agreement unless and to the extent (a) the assignment or transfer pursuant to which it acquired its Ownership Share is valid under the terms of this Agreement and (b) it becomes a Party to this Agreement by execution of this Agreement or by a written agreement, acceptable to a majority of the holders of the Ownership Shares and the Operator, to be bound by all of the terms and conditions hereof.

(40) "Ownership Share" means the respective ownership interest of an Owner expressed as a decimal fraction as specified in Section 2.1 as such may be altered or adjusted pursuant to this Agreement. In all cases Ownership Share shall be computed to two decimal places.

(41) "Permitted Claims" has the meaning set forth in Section 3.8(d).

(42) "Person" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(43) "PGE" has the meaning set forth in the introductory paragraph hereof.

(44) "PGE's Allocation" means the percentage of the Project Rights to which PGE is entitled from time to time, as set forth in Article IV.

(45) "Power Purchase and Sale Agreement No.02-03-A" has the meaning set forth in Section 5.11.

(46) "Power Purchase and Sale Agreements" means the Wholesale Power Purchase and Sale Agreement No. 02-03-A and the Wholesale Power Purchase and Sale Agreement No. 02-06-A attached as Exhibit C hereto.

(47) "PRD Implementation Effective Date" has the meaning set forth in Section 5.9.

(48) "PRD Net Output" has the meaning set forth in Section 5.8.

(49) "Proceedings" has the meaning set forth in the Long-Term Global Settlement and Compensation Agreement.

(50) "Project" means the "Pelton and Round Butte Facilities", as defined in the Long-Term Global Settlement and Compensation Agreement.

(51) "Project Rights" means generator capability, pondage, reservoir elevation limits, inflows, minimum discharge, generator availability, reserves, load following, spill and all other capability derived from the Project (specifically including capability which may not be considered a "product" as of the Effective Date of this Agreement). "Project Rights" are net of station use and after depletions required by the Original License or the New FERC License, as applicable, and other agreements and obligations from time-to-time, including obligations to supply Capacity and/or Energy pursuant to the Cove Agreements.

(52) "Prudent Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to the action in question or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting and other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. Prudent Utility Practice shall also include those practices, methods and acts that are required by Applicable Law and final orders or regulations of Governmental Authorities having jurisdiction.

(53) "Purchase Price" has the meaning assigned to that term in the Asset Purchase Agreement.

(54) "Reserve Account" has the meaning set forth in Section 5.14.

(55) "Right of First Refusal" has the meaning set forth in Section 12.2.

(56) "Scheduling Day" means those days on which the majority of the power market participants in the geographic area of the Western Systems Coordinating Council (as such geographic area is defined as of the Effective Date) schedule Energy, Capacity and other products for future deliveries. (With limited exceptions, as of January 1, 2001 such Scheduling Days are all days except Saturdays, Sundays and holidays).

(57) "Taxes" means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility gross receipts, privilege, sales, use, consumption, excise, lease, transaction and other taxes or governmental charges, licenses, fees, permits and assessments or increases therein, other than taxes based upon net income or net worth.

(58) "Term" means the term of this Agreement as defined in Section 9.1.

(59) "Tribal Lands" has the meaning set forth in the recitals hereof.

EXHIBIT 2

(60) "Tribes" has the meaning set forth in the introductory paragraph hereof.

(61) "Tribes' Allocation" means the percentage of the Project Rights to which the Tribes are entitled from time to time, determined as set forth in Article IV.

(62) "Tribes As Third Party" means the Tribes in their status not as an Owner, but rather as a third party otherwise independent of the Project. For example, the Tribes would be a third party relative to their status as the owner of the lumber mill in Warm Springs, but would not be a third party relative to their status as an Owner of an undivided interest in the Project.

(63) "Tribes' Ownership Costs" means all of the actual, out-of-pocket costs incurred by the Tribes relating to the Project which would be recognized by FERC were the Tribes required to maintain accounts in accordance with the Uniform System of Accounts. Such costs shall include all costs arising from the ownership, operation and maintenance of the Project and the depreciation component of renewals and replacements for which the Tribes are required to reimburse PGE pursuant to this Agreement. Such costs shall include debt service, return or and of equity capital contributed by the Tribes using the same amortization schedule and rate of return as those related to debt service, the costs of renewals and replacements, FERC fees, payments in lieu of Taxes, insurance and reasonable administrative costs incurred directly by the Tribes. Tribes' Ownership Costs shall also include all the prorations identified in Section 3.6(a) of the Asset Purchase Agreement.

(64) "Uniform System of Accounts" means the Uniform System of Accounts prescribed by FERC for electric utilities and hydroelectric licensees as in effect from time to time.

1.2 Interpretations.

In this Agreement, unless clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are reference to this Agreement as a whole and not to any particular Section or other provision hereof; (g) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description proceeding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II
OWNERSHIP

2.1 Initial Ownership.

Subject to the terms and conditions set forth in this Agreement, the Tribes and PGE shall own the Project as tenants in common with each owning undivided interests in the following percentages:

Tribes	33.33%
PGE	66.67%

Each Owner's undivided interest from time to time is referred to herein as its "Ownership Share".

2.2 Options of the Tribes to Increase Ownership Share.

On the terms and subject to the conditions set forth in Section 5.6 of the Long-Term Global Settlement and Compensation Agreement, the Parties recognize that the Tribes have the options to increase their Ownership Share through purchases of the Undivided 16.66% Interest and the Undivided .02% Interest.

2.3 Changes in Ownership Share.

The Ownership Shares are subject to change on account of damage to the Project as provided in Section 8.1 below. Any such changes in an Owner's Ownership Share shall take place pursuant to the terms and conditions of this Agreement and without any further act, except such regulatory approval(s) as may be required.

2.4 Miscellaneous Ownership Rights and Obligations.

Each Owner shall promptly and with all due diligence take all necessary action in aid of obtaining all regulatory approvals, licenses and permits necessary to carry out its obligations under this Agreement.

(a) Each Owner shall, from time-to-time on request, execute deeds, bills of sale and whatever other documents that may be necessary in addition to this Agreement to evidence title.

(b) The Owners expressly waive any right of partition of the Project, whether by partition in kind or sale and division of the proceeds thereof, until the end of the Project as described in Section 8.2.

(c) Nothing in this Agreement shall create a partnership, joint venture, association or, except as provided in Section 3.3, a trust. Each Owner shall severally bear its Ownership Share of all obligations and liabilities of the Project as they arise. No Party shall have a right or power to bind any other Party without its written consent, except as provided in this Agreement. IN THEIR RELATIONS WITH EACH OTHER UNDER THIS

EXHIBIT 2

AGREEMENT, THE OWNERS SHALL NOT BE CONSIDERED FIDUCIARIES OR TO HAVE ESTABLISHED A CONFIDENTIAL RELATIONSHIP, BUT RATHER SHALL BE FREE TO ACT ON AN ARM'S LENGTH BASIS IN ACCORDANCE WITH THEIR OWN RESPECTIVE SELF-INTEREST, SUBJECT, HOWEVER, TO THE OBLIGATIONS OF THE OWNERS TO ACT IN GOOD FAITH IN THEIR DEALINGS WITH EACH OTHER WITH RESPECT TO ACTIVITIES HEREUNDER.

(d) Each Owner and its designees shall have the right to go upon and into the Project at any time, subject to the necessity of efficient and safe construction and operation of the Project, but the Operator alone shall have possession and control of the Project for and on behalf of all of the Owners.

2.5 Round Butte Switching Station 230 kV Main Bus.

(a) The Tribes shall have the right, without Operating Committee approval, to install a 230kV line position in the Round Butte switching station, to connect such line position to the Round Butte Switching Station 230kV Main and Auxiliary Bus and to operate such line position. Design and operation of such line position shall be in accordance with Prudent Utility Practice and all applicable standards of the Operator, and the Tribes shall obtain the Operator's approval for the design and protection scheme for the line position. PGE shall have no right to use such line position and shall not be required to pay for any of the costs thereof. The Tribes shall compensate PGE equitably for any costs and losses incurred by PGE in connection with the installation of the line position and the connection of such line position to the Round Butte Switching Station 230kV Main and Auxiliary Bus.

(b) PGE shall have the right, without Operating Committee approval, to modify the Round Butte Switching Station 230kV Main Bus to increase the capacity of such bus. Design of such modifications to achieve the capacity increase shall be in accordance with Prudent Utility Practice and all applicable standards of the Operator, and PGE shall obtain the Operator's approval for the design and protection scheme for the modifications. The Tribes shall not have the right to participate in, or utilize, the increase in capacity and shall not be required to pay for any of the costs thereof. The Tribes shall modify the line position described in Section 2.5(a) above if necessary to accommodate the modifications to achieve the capacity increase. PGE shall compensate the Tribes equitably for any costs (including costs related to any necessary modification of the Tribes' line position, both at the time of the capacity increase and thereafter) and losses incurred by the Tribes in connection with any modification of the Round Butte Switching Station 230kV Main Bus to increase the capacity of such bus.

ARTICLE III
OPERATION

3.1 Operator.

(a) Appointment of PGE as Operator. In order to provide unified management of the Project, each Owner authorizes and designates PGE alone as operator (the "Operator") to operate and maintain the Project under the terms of this Agreement; provided that

EXHIBIT 2

PGE shall not be deemed to have the status or responsibility of an independent consultant, contractor or engineer.

(b) Rights and Duties of the Operator. The Operator, as agent for and on behalf of the Owners, shall, in accordance with Prudent Utility Practice, this Agreement, the Operating Guidelines, any manufacturer's warranty requirements and all Applicable Laws, orders, permits and licenses, now or hereafter in effect:

(i) operate and maintain the Project;

(ii) represent the Owners with Governmental Authorities on all Project matters within the scope of the Operator's responsibilities hereunder;

(iii) take any and all actions necessary or appropriate to comply with such Applicable Laws, orders, permits and licenses, now or hereafter in effect;

(iv) hire all Project personnel; and

(v) pay all Costs of Operation.

Subject to the foregoing, the Operator shall operate and maintain the Project so as to produce, where practicable and consistent with Prudent Utility Practice and the terms of this Agreement, the amounts of Energy which may be scheduled by the Owners as provided herein. The Operator is hereby granted and shall have the rights and powers to do everything necessary, proper and customary, in the ordinary course of business, to fulfill its obligations and effectuate its role as Operator, including the power to enter into contracts with third parties for and in behalf of the Owners, the power to make and receive payments, the power to initiate, compromise or settle claims with third parties, the power to act as agent in its own name and the power to appoint subagents. The Operator shall negotiate any contracts entered into with unions and set wage scales for nonunion personnel.

(c) Licensing. The Operator shall, in consultation with the Operating Committee, diligently pursue whatever action is necessary or appropriate to obtain and maintain all FERC, Oregon and general licenses, permits and other rights and regulatory approvals necessary to operation of the Project for itself and in behalf of the Owners. The Owners acknowledge that there is no assurance that such permits, licenses and approvals will be retained or obtained.

(d) Communications by Operator to Owners. The Operator shall inform each of the Owners of all material matters necessary to enable all the Owners to participate meaningfully in decision-making related to the Project. The Operator shall provide such information reasonably in advance of any actions or decisions to be made by the Operating Committee, subject to the circumstances thereof. The Operator shall accommodate to the extent reasonably possible reasonable requests for additional information and reasonable requests to discuss matters with the Tribal Council and other representatives of the Tribes.

The Operator shall present to each of the Owners a written report describing any event related to the Project which (x) involved a failure to operate the Project in accordance with

EXHIBIT 2

Prudent Utility Practice, this Agreement or the Operating Guidelines or (y) resulted in, or created a significant risk of, either serious injury to a Project employee or member of the public; serious damage to fish, wildlife or other environmental interests; or material economic injury to an Owner. The Operator shall also discuss with the Operating Committee any measures it proposes to prevent or mitigate any similar events in the future. No failure to provide such a report shall by itself either be an event of default or prejudice the Operator's status as the Operator if the Operator's actions were not in bad faith.

(e) Limitations on Compensation and Liability of Operator; Limited Indemnification by Operator. The Tribes acknowledge that were PGE or any other entity to be exposed to significant potential liability to the Tribes arising from the role of Operator, PGE or such other entity would insist upon being adequately compensated by the Tribes for accepting such risk. PGE is willing to perform the role of Operator without compensation other than reimbursement of its expenses and costs, including overhead, as provided in Section 3.4, provided PGE's liability to the Tribes arising or resulting from its role as Operator is substantially limited both with respect to the kind and amount of damages to which it might be exposed. As provided in this Section 3.1(e), the Tribes and PGE intend to limit substantially PGE's potential liability arising from PGE's role as Operator, purchase insurance to mitigate some risks, allocate some risks to the Owners collectively as Costs of Operation and allocate other risks to the Owners individually. To achieve a fair balance of cost and risk allocation, the Owners agree as follows.

(i) The Tribes and PGE agree that PGE shall act without compensation in its role as the Operator of the Project other than reimbursement of its expenses and costs, including overhead, as provided in Section 3.4.

(ii) The Tribes acknowledge therefore that, under the terms of this Agreement, PGE is not being compensated, as would be an independent provider of operating services, for any risk that it would be liable to the Tribes for any failure of its performance to satisfy any contractual or tort standard.

(iii) In behalf of the Tribes and PGE as Owners, PGE as Operator shall procure and maintain the insurance coverage described in Section 11.1 related to Project property and equipment in the same manner as the Operator insures its other owned and operated like facilities.

(iv) PGE as Operator shall procure and maintain the insurance coverage described in Section 11.2 related to workers' compensation, general liability and automobile liability in the amounts specified in Section 11.2. To the extent, and only to the extent, any claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) are covered by the insurance obtained pursuant to Section 11.2, both with respect to scope of coverage and dollar limits of coverage (collectively, "Covered Claims"), PGE as Operator agrees to indemnify and hold harmless the Tribes from and against all such Covered Claims.

EXHIBIT 2

(v) To the extent not covered by the insurance described in Sections 11.1 and 11.2, the Tribes hereby waive any and all Claims whether in contract, warranty, tort (including PGE negligence), strict liability or otherwise, against PGE, its employees, officers, agents or Affiliates related to the role of Operator with respect to all risks of physical damage to property and equipment part of or in any way related to the Project, worker's compensation, general liability for personal and bodily injury and property damage (including damages to the property of the Tribes As Third Party), automobile liability and all other risks described in Sections 11.1 and 11.2.

(vi) The following amounts shall be treated as Costs of Operation and therefore shared by the Owners in accordance with their Ownership Shares:

(A) Any self-insurance or deductible amounts for damages otherwise covered under any of the policies described in Sections 11.1 and 11.2;

(B) Any amounts for damages otherwise covered under any of the policies described in Sections 11.1 and 11.2 that are in excess of the policy limits;

(C) Any amounts for risks not covered by the policy described in Section 11.1;

(D) Damages paid to third parties other than the Tribes As Third Party, including on account of risks not covered by the insurance in subsection (iv) above or excluded by that insurance, as provided in Section 3.8(c) below; and

(E) Damages paid to the Tribes As Third Party, as provided in Section 3.8(d) below.

(vii) The Tribes and PGE agree that they shall separately and individually bear the risks of non-operation and reduced operation of the Project and that they shall separately and individually make determinations whether they desire to procure insurance to cover risks related to special, incidental, exemplary or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the Project or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or Claims of customers of Tribes for such damages and such Claims from Tribes' customers. None of the foregoing damages shall be treated as Costs of Operation.

(viii) In the event any of the foregoing provisions of this Section 3.1(e) with respect to limitations on PGE's potential liability arising from the role of Operator are held unenforceable in whole or in part for any reason, THE TRIBES AGREE THAT IN NO EVENT SHALL PGE, ITS EMPLOYEES, OFFICERS, AGENTS OR AFFILIATES BE LIABLE TO THE TRIBES WITH RESPECT

EXHIBIT 2

TO PUBLIC LIABILITY FOR PERSONAL AND BODILY INJURY AND PROPERTY DAMAGE, ALL RISKS OF PHYSICAL DAMAGE TO PROPERTY AND EQUIPMENT THAT IS PART OF THE PROJECT, WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY AND ALL OTHER RISKS COVERED BY THE INSURANCE DESCRIBED IN SECTIONS 11.1 AND 11.2, DURING ANY PERIOD OF TWELVE (12) CONSECUTIVE MONTHS FOR AN AMOUNT IN EXCESS OF THE AGGREGATE PAYMENTS PGE HAS RECEIVED FROM THE TRIBES UNDER THIS AGREEMENT DURING SUCH TWELVE (12) MONTH PERIOD AS REIMBURSEMENT ON ACCOUNT OF PGE'S LABOR AND OTHER INTERNAL COSTS, INCLUDING OVERHEAD, INCURRED AS OPERATOR OF THE PROJECT.

(ix) Consistent with the agreements expressed in paragraphs (i) and (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e) above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL PGE FROM ITS ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED. This Section 3.1(e)(ix) shall not apply to Covered Claims for which PGE has indemnified the Tribes pursuant to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought against the Project, as opposed to PGE in its role as Operator.

(x) Consistent with the agreements expressed in paragraphs (i) and (vii) of this Section 3.1(e) and the acknowledgment expressed in Section 3.1(e) above, THE TRIBES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW, IN NO EVENT SHALL PGE FROM ITS ROLE AS OPERATOR BE LIABLE TO THE TRIBES HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT. This Section 3.1(e)(x) shall not apply to Covered Claims for which PGE has indemnified the Tribes pursuant to Section 3.1(e)(iv) and to Claims by the Tribes As Third Party brought against the Project, as opposed to PGE in its role as Operator.

(xi) To the extent the foregoing limitations of liability and exclusions of damages described in paragraphs (ix) and (x) of this Section 3.1(e) are for any

EXHIBIT 2

reason determined to be ineffective by a court of competent jurisdiction, the Parties stipulate that the calculation of damages for those claims which survive the limitations and exclusions specifically set forth in paragraphs (ix) and (x) shall be no greater than $500,000 per Claim.

(f) Replacement of Operator. The Operator may be replaced only as provided in this Section 3.1(f).

(i) The Operator may be replaced without cause by majority vote of total Ownership Shares; provided that no replacement of an Operator without "Cause"(as defined below) shall become effective earlier than four (4) years from the date of such vote unless the existing Operator consents to an earlier date. No proposal to replace the Operator without Cause may be submitted to arbitration pursuant to this Section 3.1(f) or otherwise, and the vote of the Operating Committee shall be final, conclusive and binding on the Owners for all purposes.

(ii) Any Party may propose to the Operating Committee that the Operator be replaced for "Cause." "Cause" for this purpose means the existence of all three of the following conditions:

(A) The Operator has failed on at least three (3) occasions within the immediately preceding five year period to operate the Project in accordance with Prudent Utility Practice, this Agreement or directions of the Operating Committee;

(B) At least three (3) of the events referred to in Section 3.1(f)(ii)(A) have resulted in, or created a significant risk of, either serious injury to a Project employee or member of the public; serious damage to fish, wildlife or other environmental interests; or material economic injury to an Owner; and

(C) The Operator has failed to present to the Operating Committee a plan that provides reasonable assurance that the Operator will in the future operate the Project in accordance with Prudent Utility Practice, this Agreement and directions of the Operating Committee.

Replacement of the Operator for Cause shall require (x) "Cause", as defined above, and (y) a vote of members of the Operating Committee representing at least 65% of the total Ownership Shares. Any Owner may submit the result of such vote to arbitration utilizing the procedures specified in Section 3.2(g) below; provided, however, the arbitrator may approve the proposal to remove the Operator for Cause if, and only if, the arbitrator issues a written decision including findings of fact that all of the elements of Cause set forth above were established by clear and convincing evidence.

EXHIBIT 2

(iii) If the Operator is replaced, whether or not for Cause, it shall be entitled to be reimbursed as Costs of Operation the reasonable costs it incurs as a result of such replacement (e.g., employee severance costs).

(iv) The Operator may resign its duties as Operator at any time; provided that no such resignation shall become effective earlier than one (1) year from the date of notice thereof to all the Owners unless all the Owners consent to an earlier date. If the Operator resigns it shall not be entitled to reimbursement of the costs it incurs as a result of such resignation.

(v) In the event the Operator is replaced or resigns pursuant to this Section 3.1(f), the Operating Committee shall select a new Operator and enter into a contract with such new Operator by vote of seventy-five per cent (75%) of the Ownership Shares; provided, however, that the Operating Committee may only select as the new Operator an Affiliate of an Owner by a unanimous vote of the Ownership Shares. Any Owner that disapproves any such selection may submit the selection to arbitration utilizing the procedures specified in Section 3.2(g) below. The arbitrator shall approve the selection unless the arbitrator issues a written decision including findings of fact that one or more of the following conditions has been established by clear and convincing evidence:

(A) The proposed Operator lacks reasonable experience in the operation and maintenance of hydroelectric generating stations;

(B) The proposed Operator has a record of serious failures to operate other hydroelectric generating stations in accordance with Prudent Utility Practice; or

(C) The proposed Operator has a history of dishonesty, willful misconduct or serious violations of environmental laws or regulations which provides a strong basis to conclude that the Operator will not operate the Project in accordance with Prudent Utility Practice, this Agreement or directions of the Operating Committee.

(vi) An existing Operator that is an Owner may only assign its role as Operator to an entity to which such Owner transfers all of its Ownership Shares. Any Owner that objects to such assignment of the Operator role may, within thirty (30) days' of the date of such notice, submit such assignment of the Operator role to arbitration utilizing the procedures specified in Section 3.2(g) below. The arbitrator shall approve the assignment unless the arbitrator issues a written decision including findings of fact that one or more of the following conditions has been established by clear and convincing evidence:

EXHIBIT 2

(A) The proposed Operator lacks reasonable experience in the operation and maintenance of hydroelectric generating stations;

(B) The proposed Operator has a record of serious failures to operate other hydroelectric generating stations in accordance with Prudent Utility Practice; or

(C) The proposed Operator has a history of dishonesty, willful misconduct or serious violations of environmental laws or regulations which provides a strong basis to conclude that the Operator will not operate the Project in accordance with Prudent Utility Practice, this Agreement or directions of the Operating Committee.

(vii) Any determination by the arbitrator to prohibit the assignment of the role of Operator shall not adversely affect any otherwise valid assignment of the Ownership Share of the Owner that is also the Operator if such latter assignment is valid pursuant to Section 12.1; provided, however, that the assignee of such Ownership Share shall then not be entitled to propose that it become the new Operator. If the arbitrator determines consistent with Section 3.1(f)(vi) to prohibit the assignment of the role of Operator and the Owner that is also the Operator nevertheless consummates the assignment of its Ownership Share, then the Operator shall offer to the Owners to continue to perform as Operator under the terms and conditions of this Agreement for a period of no greater than one year from the date of such arbitrator's decision. Any acceptance of such offer shall be by majority vote of the Ownership Shares of all Owners not assigning their shares.

(viii) The Parties acknowledge that if a new Operator is installed other than as a result of assignment of PGE's role as Operator that it will likely be necessary to negotiate and execute a contract with such new Operator which includes provisions for compensation and risk allocation that could be significantly different than those provided for in this Ownership and Operation Agreement. The Owners agree that in the event the Owners enter into such a contract with a new Operator, then all provisions in this Agreement related to the compensation of the Operator and limitations on the liability of the Operator shall thereafter be void relative to the new Operator.

(g) Ratification of PGE's Prior Acts. The Tribes hereby ratify and approve all contracts entered into by PGE and all actions taken by PGE with respect to the Project which were entered into or taken by PGE prior to the Effective Date of this Agreement, including the Long-Term Global Settlement and Compensation Agreement.

EXHIBIT 2

3.2 Operating Committee and Operating Decisions.

(a) Establishment of Operating Committee. The Tribes and PGE hereby establish an "Operating Committee" to facilitate effective cooperation, interchange of information, economical operation and efficient management of the Project and addressing appropriately natural resources impacted by the Project, on a prudent and orderly basis. The Operating Committee shall be responsible for ensuring that the Owners maintain an adequate level of communication among all parts of the Owners' organizations, both internally and with each other, in order that potential issues or problems may be identified and addressed at an early stage.

(b) Composition of Operating Committee. The Operating Committee shall consist of one member representing each of the Owners. The Owners shall endeavor to appoint to the Operating Committee individuals who (i) will promote cooperation, good working relationships, sound decision-making and achievement of long-term economic benefits from the Project while addressing appropriately natural resources impacted by the Project and (ii) have the technical and fiscal skills necessary to optimize the benefits of the Project; provided, however, the Parties agree they shall not be entitled to challenge the qualifications of any individual, or another Owner's appointment of any individual, either pursuant to Section 3.2(g), Section 7.3 or otherwise. At the time of the execution of this Agreement, the Tribes shall appoint one representative to the Operating Committee and PGE shall appoint one representative. Thereafter, the Owners shall be entitled to appoint replacement representatives to the Operating Committee. The Tribes shall also designate one person with natural resource management responsibilities, and shall request the United States Department of the Interior to also designate such a person, to serve as points of contact with the Operating Committee relative to Project natural resource issues. These persons shall attend Operating Committee meetings if requested by the Operating Committee.

(c) Operating Committee Meetings. The Operating Committee shall meet at such times as may be agreed or upon three (3) days' written notice by any member, and shall keep written minutes of its meetings. The Operating Committee shall also accommodate any reasonable requests for a meeting with the natural resource points of contact described in Section 3.2(b). Each member of the Operating Committee shall have the right to vote the Ownership Share of the Owner appointing such member. Any action which may be taken at a meeting of the Operating Committee may be taken without a meeting by individual action taken in writing by members of the Operating Committee.

(d) Matters to Be Approved by Operating Committee. The Owners may and, where this Agreement requires it the Operator shall, submit matters (including, without limitation, estimates and schedules) relating to operation of the Project to the Operating Committee for approval.

(i) Each of the following matters shall be submitted to the Operating Committee for approval by unanimous vote of the Ownership Shares:

EXHIBIT 2

(A) Proposals for Elective Capital Additions costing in excess of $500,000 and for which all Owners are to contribute to the costs thereof;

(B) Determinations related to allocation of Project Rights required pursuant to Section 4.1(b); and

(C) Proposals to appoint as Operator an Affiliate of one of the Owners.

(ii) Proposals for the selection of a new Operator pursuant to Section 3.1(f)(v) and to enter into a contract with such new Operator shall require approval of Operating Committee members representing at least 75% of the Ownership Shares.

(iii) Proposals for the replacement of the Operator for Cause pursuant to Section 3.1(f)(ii) shall require approval of Operating Committee members representing at least 65% of the Ownership Shares.

(iv) Each of the following matters shall be submitted to the Operating Committee for approval by majority vote of the Ownership Shares:

(A) Any proposal made by Operating Committee members appointed by an Owner that is not the Operator;

(B) Budgets for Costs of Operation and Costs of Capital Additions and changes therein as provided in Section 3.4;

(C) Awards of any contract, approval of any change order, or payment of any controverted Claim, in excess of $1,000,000;

(D) Estimates of cost of repair or damage to the Project if in excess of $2,000,000, recommendation whether to repair in whole or part or to remove from service, and budget for repair of the Project; and

(E) Proposals to replace the Operator without Cause pursuant to Section 3.1(f)(i).

(e) Efforts to Achieve Consensus. The Owners shall make reasonable efforts to achieve consensus on matters to be submitted to the Operating Committee for approval. Each Owner shall act in good faith to accommodate reasonable requests from other Owners to discuss such matters prior to a vote by the Operating Committee. In addition, subject to Section 2.4, each Owner shall give due consideration to the views of the other Owner(s) prior to casting its vote on Operating Committee matters.

(f) Voting. The member of the Operating Committee representing a Party shall vote that Party's Ownership Share on any matter to be decided by the Operating Committee. Except as otherwise provided in Section 3.2(d), decisions of the Operating Committee shall be by majority vote of the Ownership Shares. In the case of a tie vote, the Operator shall cast the tie-breaking vote. Matters not disapproved by a member of the Operating Committee within the time after submission specified in the submittal, which shall not be less than specified in this Agreement (or if no time is specified in this Agreement, then within seven (7) calendar days) shall be deemed approved by such member. No member of the Operating Committee shall disapprove (i) matters which were submitted to the committee pursuant to the terms of this Agreement and not disapproved within the time allowed, (ii) items found by the arbitrator to have been consistent with Prudent Utility Practice, (iii) items where costs will be or were borne by the Operator individually, or (iv) items, other than Elective Capital Additions, with a cost less than $1,000,000.

(g) Arbitration. The Owners hereby agree to arbitrate, pursuant to the procedures established by this Section 3.2(g), matters (i) specified in this Agreement to be submitted to arbitration pursuant to this Section 3.2(g) and (ii) required to be submitted to the Operating Committee for approval, but which have been disapproved by such committee; provided that any proposal to replace the Operator without Cause pursuant to Section 3.1(f)(i) may not be submitted to arbitration pursuant to this Section 3.2(g). With respect to all matters disapproved by the Operating Committee, each member that, within the specified time, disapproved an item shall, at the time of such disapproval, state in writing its reasons and what alternative is acceptable. Items not so identified shall be deemed approved. The Owners shall submit all such disapproved matters to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties agree that any such matter shall be submitted to one arbitrator selected by the American Arbitration Association from its panel of arbitrators. If a matter involves replacement of the Operator or prohibition of assignment of the role of Operator, the arbitrator shall follow the process specified in Sections 3.1(f)(ii) and 3.1(f)(vi), respectively. If a matter involves an issue other than replacement of the Operator or prohibition of assignment of the role of Operator, the arbitrator shall follow the process specified in paragraphs (A) through (E), below.

(A) The arbitrator shall first consider the action or response proposed by the Operator. In doing so, the arbitrator shall consider all written arguments and factual materials which have been submitted to it by any member of the Operating Committee within ten (10) days following its appointment, and as promptly as possible after the expiration of such period make a written determination as to whether the action or response proposed by the Operator would or would not have been consistent with Prudent Utility Practice.

(B) Matters or items proposed by the Operator and found by the arbitrator to be consistent with Prudent Utility Practice shall become immediately effective. If, and only if, the arbitrator determines that the matter or item proposed by

EXHIBIT 2

the Operator was not consistent with Prudent Utility Practice, then and only then shall it consider actions or responses proposed by Owners. If the arbitrator determines the matter or item proposed by the Operator to be inconsistent with Prudent Utility Practice and the action or response proposed by an Owner to be consistent with Prudent Utility Practice, the action or response found by the arbitrator to be consistent with Prudent Utility Practice shall become immediately effective. If, and only if, the arbitrator determines the actions or responses proposed by both the Operator and any Owners to be inconsistent with Prudent Utility Practice, the arbitrator shall be authorized to modify the action or response to conform to what would, under the circumstances, have met such test. Such action or response, as modified, shall become effective only if the Operating Committee agrees in accordance with the required percentage vote.

(C) If the arbitrator determines that the item referred to it was consistent with Prudent Utility Practice or determines in a matter involving a potential replacement of the Operator that the Operator should not be replaced, the cost of employing the arbitrator and the related expenses of its determination shall be borne by the Owner(s) whose members on the Operating Committee disapproved such item or proposed the replacement of the Operator, as the case may be, in proportion to their Ownership Shares. For all matters other than those involving replacement of the Operator, the cost of employing the arbitrator and the related expenses of its determination shall be a Cost of Operation if the arbitrator determines that the item referred to it was not consistent with Prudent Utility Practice. If a matter involves replacement of the Operator or a prohibition of assignment of the role of Operator, and the arbitrator determines that the Operator should be replaced or that the assignment of the role of Operator should be prohibited, then the cost of employing the arbitrator and the related expenses of its determination shall be borne by the Owner that is also the Operator.

(D) The Operator shall have the right, but not any duty, to proceed with an item prior to the time allowed under Section 3.2(f) or which has been disapproved by a member of the Operating Committee; provided if the determination made by the arbitrator is that the item was not consistent with Prudent Utility Practice, then the Owner that is the Operator shall individually bear the net increase in Costs of

EXHIBIT 2

Operation of such action to the extent it was inconsistent with what the arbitrator determined would, under such circumstances, have met such test.

(E) The arbitrator shall not have authority to award exemplary or punitive damages, nor damages contrary to the terms of this Agreement. The Parties further agree that they will faithfully observe this Agreement and the rules, and that they will abide by and perform any award rendered by the arbitrator and that a judgment of a court having jurisdiction may be entered upon the award; provided the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrator's authority under this Agreement or the Federal Arbitration Act.

(h) Annual Meeting of Senior Representatives. PGE and the Tribes recognize that maintaining good lines of communication between their senior representatives is important to the long-term success of the Project and this Agreement and commit to establishing these lines of communication and keeping them open. Accordingly, upon the request of either Owner, senior representatives of each Owner shall meet annually upon thirty (30) days' written notice to discuss any and all matters related to the Project.

(i) Annual Report to the Tribal Membership. In recognition of the special importance of the Project to the Tribal membership, the Operating Committee shall annually present for distribution to all members of the Tribes a brief report in appropriate form regarding the Project.

3.3 Operating Trust Account and Payment of Costs of Operation.

(a) Within thirty (30) days after the Effective Date or such earlier time as the Operating Committee shall agree, PGE shall establish a trust account ("Operating Trust Account") in a bank located in the State of Oregon and having qualifications meeting all requirements imposed upon depositories for any of the Owners. Each Owner shall promptly deposit in such account its Ownership Share of a working cash fund of $200,000, or such other amount as the Operating Committee shall determine. All monies received by Operator of the Project on account of the Project shall be deposited in the Operating Trust Account, and the Operator shall withdraw and apply funds as necessary.

(b) No later than the last Business Day prior to the first and fifteenth day of each month, each Owner shall deposit in the Operating Trust Account one-half (1/2) of such Owner's Ownership Share of the amount budgeted for that month in the Effective Budget adjusted for deviations between budget and actual expenses; provided that when a revised Operating Budget becomes effective during a month, each Owner shall immediately deposit in the Operating Trust Account such Owner's Ownership Share of any increase effectuated by the revised Operating Budget for that month.

EXHIBIT 2

3.4 Reimbursement for Advances.

The Operator shall be reimbursed from the Operating Trust Account for (i) all Costs of Operation and all Costs of Capital Additions advanced by it hereunder, and (ii) administrative and general costs determined pursuant to Exhibit B. Such administrative and general costs shall be paid from the Operating Trust Account in equal monthly installments on the payment date nearest the middle of each month.

3.5 Taxes.

Each Owner shall pay individually property taxes that are assessed exclusively on the property interests of only one of the Owners. If any Taxes are paid or incurred by the Project as a whole or by the Operator on behalf of the Project as a whole, each Owner shall pay its applicable portion of the Taxes associated with its undivided interest in the Project. Each Owner shall use reasonable efforts to administer this Agreement and implement the provisions hereof in accordance with the intent to minimize Taxes.

3.6 Operations and Capital Additions Budgets.

(a) On or before each November 1, the Operator shall submit to the Operating Committee a budget of the Costs of Operation and Costs of Capital Additions, for each month for the next succeeding calendar year. Each budget shall be supported by detail adequate for the purposes of each Operating Committee member and shall show, among other things, staffing allocation, Operator services and calculations of administrative and general expenses. Such budget shall become effective unless disapproved within thirty (30) days after submittal. (The approved budget is referred to herein as the "Effective Budget").

(b) The Effective Budget shall be changed:

(i) to include costs occasioned by an emergency,

(ii) to provide for repairs, renewals, replacements or additions necessary to achieve design Capacity and Energy capability, or

(iii) to provide for an expenditure required by Governmental Authority or an expenditure otherwise required by this Agreement. Promptly after the occurrence of any of the above events, and promptly after the occurrence of other circumstances requiring the expenditure of funds not contemplated in the Effective Budget, the Operator shall submit a revised budget to the Operating Committee. Costs incurred by the Operator in the exercise of Prudent Utility Practice prior to the time a revised budget becomes effective shall be added as incurred to the amounts due under the budget. The revised budget shall become effective unless disapproved within seven (7) days after submittal.

EXHIBIT 2

3.7 Accounting.

(a) The Operator shall keep separate, complete and accurate account of all deposits in and withdrawals from the Operating Trust Account and complete and accurate account of all costs incurred for which it is reimbursed from such account.

(b) All accounts shall be kept so as to permit conversion to the system of accounts prescribed for electric utilities by FERC. The manner in which accounts are kept pursuant to this Agreement is not intended to be determinative of the manner in which they are treated in the books of account of the Owners.

(c) Each Owner shall have the right at any reasonable time (i) to examine the separate books of account kept by the Operator pursuant to this section and all supporting data, (ii) to examine the books of account and all supporting data and documents relating to amounts for which any Owner is to be reimbursed and (iii) to examine and copy all plans, specifications, bids and contracts relating to the Project.

(d) The Operator shall, by the 15th of each month, supply to each Party a complete itemized account of all deposits in and withdrawals from the trust account during the previous month, together with adequate details of property retirements, removal costs and salvage, and together with an itemization of the basis for reimbursement made to the Operator from such account during each month. The Operator shall cause the Project's costs to be audited by independent certified public accountants of national reputation acceptable to all the Owners at approximately annual intervals and when such accounts are closed. Copies of such audits shall be supplied to each Owner.

(e) Any contract with any consultant or contractor of Operator providing for reimbursement of costs or expenses of any kind shall require the keeping and maintenance of books, records, documents and other evidence pertaining to the costs and expenses incurred or claimed under such contract to the extent, and in such detail, as will properly reflect all costs related to this Agreement and shall require such books, records, documents and evidence to be made available to the Owners at all reasonable times for review and audit for a period of three (3) years after final settlement of the applicable contracts.

3.8 Certain Costs and Claims Treated as Costs of Operation.

(a) Unless specifically provided otherwise in this Ownership and Operation Agreement or in the Long-Term Global Settlement and Compensation Agreement, all costs borne by PGE pursuant to the Long-Term Global Settlement and Compensation Agreement shall constitute Costs of Operation hereunder and shall be shared by the Owners in accordance with their Ownership Shares.

(b) Costs borne by PGE pursuant to the Long-Term Global Settlement and Compensation Agreement that relate to the Transmission Facilities shall not constitute Costs of Operation.

(c) Any and all Claims of Persons who are not Owners arising from or related in any way to the Project, which Claims are not the subject of an indemnity by one of the Owners

EXHIBIT 2

as provided in Article VI, shall, to the extent they are not covered by insurance maintained for the Project pursuant to Section 11.2, constitute Costs of Operation hereunder, whether such Claims were incurred prior to or after the Effective Date of this Agreement.

(d) The Tribes As Third Party shall have the right to bring Claims against the Project (but not against PGE as Operator) to the extent such Claims relate to the status of Tribes As Third Party and either or both (i) relate to harm to the Tribes' Treaty Reserved Rights incurred after the Effective Date of the Global Settlement and Compensation Agreement or (ii)(x) arise from a Claimable Event and (y) are not waived or proscribed by the Global Settlement and Compensation Agreement (Claims meeting the criteria in "(i)" or "(ii)"are hereinafter referred to as "Permitted Claims"). The provisions of this Section 3.8(d) shall apply notwithstanding the waiver contained in Section 3.1(e)(v) relating to Claims against PGE in its role as Operator. Damages paid to the Tribes As Third Party arising from any Permitted Claims against the Project shall be treated as Costs of Operation and therefore shared by the Owners in accordance with their Ownership Shares to the extent such losses are not covered by insurance maintained by the Operator pursuant to Section 11.2. In the event the Tribes As Third Party bring any Permitted Claim only against PGE and not the Project, then any damages paid by PGE to the Tribes As Third Party shall also be treated as Costs of Operation and therefore be shared by the Owners in accordance with their Ownership Shares.

3.9 Elective Capital Additions.

At any time a Party determines that a Capital Addition which is not necessary to assure design capability or is not required by any Governmental Authority, is otherwise required or useful, the Party shall prepare a cost estimate, including an appropriate allocation of administrative and general costs of the Operator, of such Elective Capital Addition, and if the Owners agree, the Operator shall proceed with construction and installation, the costs to be shared by the Owners in their Ownership Share, unless otherwise agreed to at the time. However, if all Owners do not agree to pursue the Elective Capital Addition, then the Operator alone or any other Owner alone or together with any other Owner may have such Elective Capital Addition made at its own expense, provided that such addition does not diminish the Ownership Share or increase the costs of the other Owners.

ARTICLE IV
ALLOCATION OF PROJECT RIGHTS; SCHEDULING

4.1 Allocation of Project Rights.

(a) Each Owner shall be entitled to receive as scheduled all or any part of its Ownership Share of Project Rights on a daily basis; provided that to the extent any Project Right is constrained, such Owner's rights under this Agreement shall be correspondingly limited for the same period of time. (Such entitlements of the Tribes and PGE are hereinafter referred to as the "Tribes' Allocation" and "PGE's Allocation", respectively.).

(b) Allocation of available Energy for any day shall be determined by multiplying the average daily discharge from the Pelton Reregulating Dam times the combined Pelton and Round Butte water to kWh conversion factor times twenty-four (24) hours times

EXHIBIT 2

Ownership Share. Such average daily discharge from the Pelton Reregulating Dam shall be determined by the Operator, who shall attempt to ensure maximum economic benefits to the Owners consistent with Project compliance with, as applicable, the Original License, the New FERC License, the Operating Guidelines, Project permits, Applicable Law, Prudent Utility Practice and safety. In recognition of the fact one or both of the Owners may choose to schedule their Project Rights in a manner other than that which would provide the maximum Energy generated by the Project from time to time, the Operating Committee shall develop guidelines to mitigate the impacts of one Owner's daily scheduling of Project Rights on the ability of the other Owner to obtain maximum Energy output from the Project for the day. Allocation of Project Rights other than Energy shall be pro rata by Ownership Share.

4.2 Scheduling Project Rights.

Each Owner shall schedule its Project Rights in strict accordance with the Operating Guidelines. Subject to such Operating Guidelines, Project Rights shall be scheduled as follows:

(a) The Operator shall submit to each Owner, no later than 8:30 a.m. Pacific time of each Scheduling Day, the average hourly discharge and any unusual operating constraint for the next Scheduling Day and any day that precedes the next Scheduling Day. Each Owner shall, by 10:00 a.m. of each Scheduling Day, inform the Operator's energy scheduler of its desired schedule of Project Rights for the next Scheduling Day and any day that precedes the next Scheduling Day. Each Owner, however, will have the right to change its schedule on shorter notice to reflect changes in its requirements, provided any such change does not cause a conflict with the submitted schedule of any other Owner, the Original License, the New FERC License, Project permits, the Operating Guidelines, Applicable Law, Prudent Utility Practice or safety in the Operator's reasonable discretion. The Operator shall also submit to each Owner each Scheduling Day an estimate of average daily flow pertaining to the six days immediately following the day for which average hourly discharge was submitted for scheduling purposes.

(b) Subject to the Operating Guidelines, the Owners may schedule any or all of their allocation of Project Rights for any day or any hour. An Owner shall not, however, schedule in excess of its Ownership Share of the estimated available Project Rights for any hour or any day, regardless of whether other Owners are scheduling their Ownership Share of the estimated available Project Rights for such time period.

(c) Each Owner shall be responsible for satisfying their own reserve obligations for firm Energy scheduled into the Pacific Northwest power grid consistent with requirements specified by the Western Systems Coordinating Council, or its successor.

(d) If either Owner believes that, consistent with the guidelines developed by the Operating Committee pursuant to Section 4.1(b), it has not for any given day been able to schedule its full Project Rights due to the manner in which the other Owner has scheduled its Project Rights, then the former Owner shall orally notify the latter Owner of such belief within twenty-four (24) hours of the occurrence. Any Claims for which such oral notice has not been given in such period shall be waived. To the extent possible, the Owners shall resolve any disagreement regarding such Claim immediately and to provide compensation in the form of

EXHIBIT 2

additional output from the Project as provided in the guidelines developed pursuant to Section 4.1(b).

(e) To the extent that Project reservoir levels or operating conditions not recognized in the daily schedule necessitate either prescribed minimum or prescribed maximum generation limits, the Owners shall share such limits as follows. If fulfilling the requested schedules of the Owners would require operation of the Project at an operating level above the maximum prescribed, the Owners whose schedules are less than or equal to the Ownership Share to which they are entitled of such prescribed maximum generation will receive such schedules and each of the other Owners shall reduce their schedules as necessary to bring the Project down to its prescribed maximum generation level. Such reduction shall be in proportion to the amount by which each Owner's desired schedule exceeds its Ownership Share of the prescribed maximum generation. If fulfilling the requested schedules of the Owners would require operation of the Project at an operating level below the minimum prescribed, the Owners whose schedules are greater than or equal to the Ownership Share to which they are entitled of such prescribed minimum generation will receive such schedules and each of the other Owners shall schedule and take, in addition to its desired schedule, a portion of the additional generation required to bring the Project up to its prescribed minimum generation level. Such portion shall be in proportion to the amount by which each Owner's desired schedule falls short of its Ownership Share of the prescribed minimum generation.

(f) The Operator shall schedule Project outages and notify the other Owners as far in advance as is reasonable under the circumstances. The Owners recognize that pre-scheduled major outages of the Project may result in differing impacts on the Owners. Accordingly, such major outages will be scheduled in an attempt to equalize the burdens on the Owners. If the Operating Committee does not disapprove such outage within five (5) days, the Project shall be shut down in accordance with such schedule. Notwithstanding the foregoing, the Operator may shut the Project down to avoid hazard to any Person or property, including the Project.

(g) When testing of Project facilities requires generation, each Owner shall make provision for acceptance of its Ownership Share of such generation. The Operator will notify the Owners of test schedules as far in advance as is reasonable under the circumstances. Each Owner shall also be responsible from providing its Ownership Share of Project station use.

(h) Except as modified by the provisions of Section 4.2 (e) above, during any hour in which the Project does not generate its station use and losses, the Operator's dispatcher shall notify the Owners and each Owner shall arrange for delivery of its Ownership Share of such Energy to the Project.

(i) Except as otherwise incorporated by reference in Article V, the provisions of this Article IV shall not apply to the Tribes for any period during which the Tribes have sold to PGE the Tribes' Allocation and the Tribes' rights to schedule Project Rights pursuant to Article V below.

EXHIBIT 2

ARTICLE V
USE OF THE TRIBES' ALLOCATION AND RIGHTS TO SCHEDULE PROJECT RIGHTS; SALE OF REREGULATING DAM NET OUTPUT TO PGE

5.1 Sale of the Tribes' Allocation and the Tribes' Rights to schedule Project Rights.

Unless (a) the Tribes have provided timely notice to PGE as provided in Section 5.7below of the Tribes' election not to sell the Tribes' Allocation to PGE, and (b) the Implementation Effective Date for such option as provided in such Section 5.7 has occurred, the Tribes shall sell to PGE, and PGE shall purchase and acquire from the Tribes, one hundred percent (100%) of the Tribes' Allocation and the Tribes' rights to schedule Project Rights, pursuant to the provisions of Sections 5.2 through 5.6 below. The Tribes' Allocation shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard.

5.2 Price.

PGE shall purchase the Tribes' Allocation at prices determined by reference to an index of the Market Value (as defined in Section 5.6 below) of the Energy purchased.

5.3 Taxes.

The price paid by PGE as provided herein for the purchase of the Tribes' Allocation shall include full reimbursement for, and the Tribes are liable for and shall pay, or cause to be paid, or reimburse PGE if PGE has paid, all Taxes applicable to each such purchase and levied against the seller of the Energy or the owner of the generating facility. If PGE is required to remit such Tax, the amount shall be deducted from any amounts due the Tribes. The Tribes shall indemnify, defend and hold harmless PGE from any Claims on account of such Taxes.

5.4 Determination of Index Value to be Used to Calculate Market Value.

The Market Values of Energy purchased by PGE from the Tribes shall be determined by reference to published indices reflecting the market price of firm electricity for each hour during which PGE took delivery of Energy derived from the Tribes' Allocation. Except as otherwise provided in this Section 5.4 below, the market price shall be based upon the weighted average of the daily settlement prices listed under the Dow Jones Mid-Columbia Electricity Price Index as published by Dow Jones Telerate (Telerate page 38424) in dollars per megawatt hour ("Index Value") for Firm Power transactions at the Mid-Columbia trading hub, for On-Peak Hours or Off-Peak Hours, as the case may be. (Such index values are hereinafter referred to as the "On-Peak Index Value" and "Off-Peak Index Value", respectively). "On-Peak Hours" and "Off-Peak Hours" shall be as defined from time to time for the Dow Jones Mid-Columbia Electricity Index by Dow Jones Telerate.

(a) In the event Dow Jones Telerate does not publish calculations of Index Value at the Mid-Columbia trading hub for a period less than or equal to five (5) days, then the Index Values shall be determined for such period by averaging the Index Value for the period just prior and the period just after the period for which a calculation was not published. To determine the On-Peak Index Value in such circumstances, the index value for the On-Peak Hours immediately prior and immediately subsequent shall be averaged. To determine the Off-

EXHIBIT 2

Peak Index Value in such circumstances, the index value for the Off-Peak Hours immediately prior and immediately subsequent shall be averaged.

(b) In the event Dow Jones Telerate does not publish calculations of Index Value at the Mid-Columbia trading hub for a period greater than five (5) consecutive days, then the Index Values shall be determined for such period by reference to the weighted average index for such days for the Mid-Columbia trading hub as published in Megawatt Daily by McGraw-Hill.

(c) In the event Dow Jones Telerate commences publication of Index Values for the Mid-Columbia which reflect the market price of firm electricity at that location for periods more discrete than On-Peak Hours and Off-Peak Hours (e.g. Dow Jones Telerate commences publication of hourly market prices), then Index Values shall be determined by reference to the published values for such more discrete time periods.

(d) In the event Index Values cannot be determined pursuant to the foregoing provisions of this Section 5.4, then PGE and the Tribes shall negotiate in good faith to select that substitute index which best reflects the daily market price of firm electricity in the Pacific Northwest region. If PGE and the Tribes do not agree on a substitute index, then either Party may submit the matter to arbitration using the procedures specified in Section 7.3(d) below.

5.5 Determination of Timing of PGE Purchases from the Tribes.

The timing of PGE's purchases from the Tribes shall be determined by reference to a pre-schedule submitted by Tribes. On each Scheduling Day, PGE shall provide the Tribes an estimate of the average hourly discharge and estimated Energy from the Project as provided in Section 4.2, and the Tribes shall provide by the time specified in Section 4.2 of each Scheduling Day the percentage of the Tribes' Allocation of Energy the Tribes will hypothetically take during each hour of each of the days being scheduled (it being understood that such amounts shall total 100% for each day, the Energy cannot be spread across more than one day and the limitations imposed by Sections 4.2(b) and 4.2(c) shall be applicable to such hypothetical scheduling). Such percentages shall be consistent with the submitted schedule of any other Party, the Original License, if applicable, the New FERC License if applicable, the Operating Guidelines, Project permits, Applicable Law, Prudent Utility Practice and safety, and all other provisions of Section 4.2. Once a pre-schedule is submitted pursuant to this Section 5.6, the Tribes shall not be permitted to alter it. PGE shall be deemed to have purchased from the Tribes in any hour the product of (i) the Tribes' Allocation, (ii) the percentage value properly prescheduled for that hour by the Tribes and (iii) the actual Energy of the Project for that day. For example, if the actual Energy from the Project for a Monday is equal to 3,600 megawatt hours, the Tribes properly specified 10% of its allocation to be pre-scheduled for a given hour and the Tribes Ownership Share at that time is 33.33%, then PGE shall be deemed to have purchased 119.99 megawatt hours of Energy from the Tribes for such hour.

5.6 Determination of Market Value by Application of Index Values to PGE Purchases from The Tribes.

PGE shall calculate for each hour of each day the product of the amount of its purchases (determined pursuant to Section 5.5) and the Off-Peak Index Value or On-Peak Index Value (determined pursuant to Section 5.4), as the case may be, for the subject hour. (The sum of such products for all hours of a calendar year is hereinafter referred to as the "Market Value"). PGE shall maintain such calculations for review by the Tribes at all reasonable times and shall submit by the last day of each month a report showing the calculations of Market Value for each hour of the previous month.

5.7 Election of Tribes Not to Sell Tribes' Allocation to PGE.

By notice delivered to PGE no later than April 1 of any calendar year, the Tribes shall have the one-time right to elect for the next subsequent calendar year, and all future calendar years, to take and schedule the Tribes' Allocation and use, sell or otherwise dispose of it as the Tribes may determine, rather than sell it to PGE pursuant to Sections 5.1 through 5.6 above. Such election by the Tribes shall be implemented effective on January 1 of the first calendar year after a complying notice has been given by the Tribes to PGE ("Implementation Effective Date"). On and after the Implementation Effective Date, the Tribes shall schedule their rights to receive Project Rights pursuant to Article IV above. Notwithstanding the foregoing, the Tribes' one-time election provided for in this Section shall not be effective for any calendar year during which the Acquisition Loan is outstanding or any Power Purchase and Sale Agreement remains in effect.

5.8 Sale by the Tribes to PGE of Pelton Reregulating Dam Net Output.

Unless (a) the Tribes have provided timely notice to PGE as provided in Section 5.9below of the Tribes' election not to sell the net output of the generating facilities in the Pelton Reregulating Dam ("PRD Net Output") to PGE, and (b) the effective date for such option as provided in such Section 5.13 has occurred, the Tribes shall sell to PGE, and PGE shall purchase and acquire from the Tribes, one hundred percent (100%) of the PRD Net Output and the Tribes' rights to schedule such PRD Net Output. The PRD Net Output shall be delivered to PGE at the 230 kV bus in the Round Butte switchyard. PGE shall purchase the PRD Net Output at prices determined by reference to the index of the Market Value (as defined in Section 5.6 above) of the Energy purchased. The provisions of Sections 5.3, 5.4, and 5.6 shall apply to these sales. Payment for the Energy delivered shall be made within the first fifteen days following the calendar month during which the Energy was delivered.

5.9 Election of Tribes Not to Sell PRD Net Output to PGE.

By notice delivered to PGE no later than April 1 of any calendar year, the Tribes shall have the one-time right to elect for the next subsequent calendar year, and all future calendar years, to take and schedule the PRD Net Output and use, sell or otherwise dispose of it as the Tribes may determine, rather than sell it to PGE pursuant to Sections 5.8 above. Such election by the Tribes shall be implemented effective on January 1 of the first calendar year after a complying notice has been given by the Tribes to PGE ("PRD Implementation Effective Date").

EXHIBIT 2

In the event the Tribes exercise the option provided for in Section 5.7 not to sell Tribes' Allocation to PGE, the Tribes shall also be deemed to have exercised the option in this Section 5.9 not to sell the PRD Net Output to PGE. Notwithstanding the foregoing, the Tribes' one-time election provided for in this Section shall not be effective for any calendar year during which the Acquisition Loan is outstanding or any Power Purchase and Sale Agreement remains in effect.

5.10 No Prohibition of Alternative Sales of Tribes' Allocation and PRD Net Output to PGE.

No provisions in this Article V shall prohibit the Tribes from selling, and PGE from purchasing, all or any part of the Tribes' Allocation, the Tribes' rights to schedule Project Rights and the PRD Net Output on such terms and conditions as they may agree for any period subsequent to the Implementation Effective Date.

5.11 Power Purchase Agreements.

Notwithstanding the other provisions of this Article V, the Parties agree that PGE shall purchase portions of the Tribes' Allocation and the PRD Net Output in the amounts, at the prices, on the terms and for the periods set forth in the Power Purchase and Sale Agreements. Subject to Sections 5.7 and 5.9, the balance of the Tribes' Allocation and PRD Net Output, if any, not purchased pursuant to the Power Purchase and Sale Agreements shall be purchased by PGE in accordance with the terms of this Agreement. Without in any way limiting PGE's rights under Section 5.13 below, the Tribes hereby grant to PGE a security interest in the Tribe's Allocation, whether now in existence or created or arising at any time in the future, to secure repayment of the Acquisition Loan. PGE's rights under this Agreement are cumulative and may be exercised at any time without affecting any of its other rights under this Agreement. The Tribes represent and warrant that as of the date of this Agreement the Tribes' Allocation and PRD Net Output is free and clear of all liens, charges and encumbrances. The Tribes shall keep the Tribes' Allocation and PRD Net Output free and clear of all liens, charges and encumbrances from and after the date of this Agreement until the Acquisition Loan is repaid in full.

5.12 Acquisition Loan.

On the Transfer Date, PGE shall lend to the Tribes an amount in United States dollars equal to the Estimated Purchase Price, less all of the reasonable and necessary costs incurred by the Tribes to obtain the New FERC License with respect to the Pelton and Round Butte Facilities (the "Acquisition Loan"). Any Adjustment Amount payable by PGE under Section 3.4 of the Asset Purchase Agreement shall be deemed to be a reduction in the principal amount of the Acquisition Loan, and any Adjustment Amount payable by the Tribes under said Section 3.4 shall be deemed to be an increase in the principal amount of the Acquisition Loan, in each case as of the Transfer Date. The Acquisition Loan shall bear interest at 8.50% per annum until January 1, 2003 and 12.71% thereafter, shall be repayable as provided in Section 5.13 and shall be evidenced by a note substantially in the form of Exhibit D hereto.

5.13 Repayment of Acquisition Loan.

The Acquisition Note shall be payable in equal monthly installments as provided in Exhibit D and shall mature on the earlier of (a) January 1, 2007 or (b) the day prior to the date of any sale or other transfer of the Tribes' Ownership Share. The Tribes may prepay the Acquisition Loan in whole or in part at any time without penalty. Until the Acquisition Loan has been repaid in full, all amounts payable by PGE to the Tribes under the Power Purchase and Sale Agreements and under Article V hereof for the Tribes' Allocation or PRD Net Output shall be deemed paid to the Tribes, but shall be retained by PGE as provided in this Section 5.13. All such retained amounts shall be deemed to be applied first to any Costs of Capital Additions payable by the Tribes should the Tribes be in breach of its obligations under Article III, second to any Costs of Operation payable by the Tribes should the Tribes be in breach of its obligations under Article III, and then to the payment of any principal and accrued interest due on the Acquisition Loan, in each case as of the date such retained amounts are payable to the Tribes. To the extent such retained amounts are not adequate to pay in full all Costs of Capital Additions, Costs of Operations and principal and interest then payable by the Tribes, the Tribes shall immediately pay any such deficiency to PGE upon demand. Any excess of the retained amounts over the amounts then payable by the Tribes shall be paid to the Tribes by PGE within the first fifteen days following the calendar month during which the Energy was delivered. Should either of the Power Purchase and Sale Agreements be terminated by the Tribes for any reason before the Acquisition Loan is paid in full, the Tribes shall thereafter make monthly payments in accordance with this Section 5.13 and Exhibit D to this Agreement until the Acquisition Loan is repaid in full.

5.14 Reserve Account.

Until the Acquisition Loan has been repaid in full, the Tribes shall cause Warm Springs Power Enterprises, a tribally chartered enterprise chartered pursuant to Section 12 of the Federal Corporate Charter of the Tribes to maintain a cash reserve account of at least $6,000,000 (the "Reserve Account") for payment of principal and interest on the Acquisition Loan. Upon demand of PGE under Section 5.13 with respect to a deficiency, the Tribes shall use amounts in the Reserve Account to pay such deficiency. If the Reserve Account falls below $6,000,000, the Tribes shall initiate promptly and maintain continuously diligent efforts in good faith to sell long-term bonds on commercially reasonable terms and in amounts sufficient to cover (a) the Tribes' share of projected Costs of Capital Additions and Costs of Operation, (b) any principal and interest due on the Acquisition Loan, and (c) the Reserve Account requirement of $6,000,000.

ARTICLE VI
MUTUAL INDEMNIFICATION; LIMITATION OF OWNERS' LIABILITY

6.1 Mutual Indemnification by Owners.

(a) Subject to the limitations on remedies, warranties and damages provided for in this Agreement, each Owner (the "Indemnifying Owner") agrees to indemnify and hold harmless the other Owner(s) (the "Indemnified Owner") from and against all Claims of third parties, including on account of personal or bodily injury or death to Persons and damage to the Indemnified Owner's property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by default of this Agreement or by the negligent or

EXHIBIT 2

tortious acts, errors, or omissions of the Indemnifying Owner, its affiliates, directors, officers, employees, or agents. This Section 6.1(a) shall not apply to any acts, errors or omissions of PGE related to its role as Operator.

(b) Promptly after receipt by an Owner of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Section 6.1 may apply, the Indemnified Owner shall notify the Indemnifying Owner in writing of such fact. The Indemnifying Owner shall assume the defense thereof with counsel designated by such Owner and satisfactory to the Indemnified Owner, provided that if the defendants in any such action include both the Indemnified Owner and the Indemnifying Owner and the Indemnified Owner shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Owner, the Indemnified Owner shall have the right to select and be represented by separate counsel, at the Indemnifying Owner's expense, unless a liability insurer is willing to pay such costs.

(c) If the Indemnifying Owner fails to assume the defense of a Claim meriting indemnification, the Indemnified Owner may at the expense of the Indemnifying Owner contest, settle, or pay such Claim, provided that settlement or full payment of any such Claim may be made only following consent of the Indemnifying Owner or, absent such consent, written opinion of the Indemnified Owner's counsel that such Claim is meritorious or warrants settlement.

(d) Except as otherwise provided in this Article, and subject to the limitations on damages provided herein, in the event that an Owner is obligated to indemnify and hold the other Owner(s) and its successors and assigns harmless under this Section 6.1, the amount owing to the Indemnified Owner will be the amount of the Indemnified Owner's actual loss net of any insurance proceeds received by the Indemnified Owner following a reasonable effort by the Indemnified Owner to obtain such insurance proceeds.

6.2 Exclusion of Liability for Certain Categories of Damages.

Consistent with the Recitals to this Agreement, the Tribes and PGE desire to minimize to the extent possible the potential for future disagreements between them with respect to the Project from matters arising under this Agreement. The Tribes and PGE also recognize the potential magnitude of the potential consequential, incidental or punitive damages that might arise from this Agreement and desire to eliminate the risks each might face were such categories of damages not excluded. For these reasons, the Tribes and PGE agree that the remedies available to them against each other shall be limited as provided below.

(a) THE OWNERS AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER OWNER BE LIABLE TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR

EXHIBIT 2

FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED.

(b) THE OWNERS AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW, IN NO EVENT SHALL EITHER OWNER BE LIABLE TO EACH OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM AN OWNER'S SOLE, JOINT OR CURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

(c) The limitations of liability specified in paragraphs (a) and (b) above shall not apply to any use by one Owner of the Project Rights to which another Owner is entitled.

(d) To the extent the foregoing limitations of liability and exclusions of damages described in paragraphs (a) and (b) above are for any reason determined to be ineffective by a court of competent jurisdiction, the Owners stipulate that the calculation of damages for those Claims which survive the limitations and exclusions specifically set forth in paragraphs (a) and (b) shall be no greater than $500,000 per Claim.

ARTICLE VII
WAIVER OF IMMUNITY; DISPUTES

7.1 Waiver of Immunity.

The Tribes acknowledge and agree that in entering into this Agreement, they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. SUBJECT TO THE PROVISIONS OF SECTION 7.4, THE TRIBES THEREFORE HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (a) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (b) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND (c) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT.

EXHIBIT 2

7.2 Choice of Laws.

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

7.3 Dispute Resolution.

(a) Scope of Disputes Covered. The provisions of this Section 7.3 shall govern all disputes between the Parties relating to this Agreement other than (i) those disputes specified in Sections 3.1(f) and 3.2 and Article VIII which are to be determined exclusively pursuant to arbitration following the procedures specified in Section 3.2(g) and (ii) the potential disputes specified in Sections 5.4(d) and 12.2(c) which are to be determined exclusively pursuant to arbitration following the procedures specified in Section 7.3(d).

(b) Mandatory Mediation. As a condition precedent to commencing any Proceedings, relating to this Agreement or the subject matter hereof, each Party shall first submit the Claim or controversy to mandatory mediation for a period of ninety days following appointment of a mediator. The Parties agree to cooperate and operate in good faith to appoint the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator. If the Parties are unable to agree unanimously upon the appointment of the mediator, then they shall unanimously seek appointment of a mediator by the Chief Judge of the United States District Court for the District of Oregon. If the Chief Judge refuses, or fails, to act the mediator shall be selected by the senior United States Senator from the State of Oregon. PGE and the Tribes agree to share equally the mediator's fees and expenses.

(c) Jurisdiction and Venue. The Parties agree that any disputes concerning, relating to or arising out of this Agreement present a federal question. With respect to any Proceeding each Party irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each Party hereto irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 7.3(d) below, each Party hereto irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. PGE's entry into this Agreement and the Included Agreements shall not be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's activities.

EXHIBIT 2

(d) Determination by Arbitration. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Parties shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award damages prohibited by this Agreement. The Parties further agree that they will faithfully observe this Agreement and the rules, and that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

7.4 Limitations on Recourse.

The Tribes hereby grants to PGE a security interest in the Tribes' Project Rights, whether now in existence or created or arising at any time in the future, to secure any and all obligations of the Tribes to PGE under this Agreement and/or with respect to the Project. PGE hereby grants to the Tribes a security interest in PGE's Project Rights, whether now in existence or created or arising at any time in the future, to secure any and all obligations of PGE to the Tribes under this Agreement and/or with respect to the Project. The Parties' rights under this Agreement are cumulative and may be exercised at any time without affecting any of its other rights under this Agreement. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under this Agreement and otherwise with respect to the Project only from the Tribes' Allocation. Likewise, the Tribes agree to seek satisfaction of any Claims they may have against PGE under this Agreement and otherwise with respect to the Project only from PGE's Allocation. Notwithstanding the foregoing, until the Acquisition Loan is paid in full, if amounts due PGE are not paid in accordance with Section 5.13, PGE can seek recourse from among the Tribes' Allocation, the Reserve Account as described in Section 5.14, or any insurance proceeds the

EXHIBIT 2

Tribes may have received or be entitled to receive related to the Project either under Article XI or otherwise. The provisions of this Section 7.4 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

ARTICLE VIII
DAMAGE TO PROJECT; END OF PROJECT

8.1 Damage to the Project.

(a) In the event that the Project suffers damage resulting from causes other than ordinary wear, tear or deterioration, to the extent that the estimated cost of repair as unanimously agreed by members of the Operating Committee, or, if they cannot agree within a period of six (6) months from the date of damage, as determined by the Arbitrator pursuant to Section 3.2(g), is less than or equal to $50,000,000, and if the Owners do not unanimously agree that the Project shall be ended pursuant to Section 8.2, the Operator shall promptly submit a revised Operating Budget and shall proceed to repair the Project, and each Owner shall pay as budgeted, into the Operating Trust Account, its Ownership Share of the cost thereof.

(b) If the Project suffers damage to the extent that the estimated cost of repair exceeds $50,000,000 as determined in Section 8.1(a), the Operating Committee shall agree upon, or if they cannot so agree within six (6) months from the date of damage, the arbitrator shall determine the estimated value of the Project as and when repaired. Thereafter, each Owner which, within a reasonable time to be determined by the Operating Committee, gives notice in writing to the other parties of its desire that the Project be repaired, shall, in the proportion that its Ownership Share bears to the total of the Ownership Shares of all Owners giving such notice, pay into the Operating Trust Account, as budgeted in a revised budget, all of the cost of repair. If any Owner has given such notice, the Ownership Share of each Owner which does not give notice shall, at the end of the reasonable time which was determined by the Operating Committee, be reduced to the extent determined by the following formula:

$$S2 = S1 \frac{[V - (C - I)]}{[V]}$$

where

V	=	Estimated value of the Project as repaired
C	=	Estimated cost of repair
I	=	Estimated insurance proceeds, if any, inuring to the benefit of all Parties (shall not include insurance proceeds to which only individual Parties are entitled)
S1	=	Ownership Share prior to loss
S2	=	Reduced Ownership Share

At the same time, the amount of such reduction shall be added to the Ownership Share of the Owners giving such notice in the proportion that the Ownership Share of each bears to the total of the Ownership Shares of all Owners giving such notice.

EXHIBIT 2

(c) If the Project suffers damage to the extent that the estimated cost of repair as determined in Section 8.1(a) exceeds $50,000,000 and no Owner gives the notice required by Section 8.1(b), the damaged Project shall not be repaired. If portions of the Project are still capable of economically generating electricity, then the Operator shall implement the procedures specified in Section 8.2 with respect to the damaged facilities and continue to operate the remaining facilities. If none of the Project is still capable of economically generating electricity, then the Operator shall end the Project pursuant to Section 8.2.

(d) The Parties expressly agree that no reduction in the Tribes' Ownership Share that may occur pursuant to Section 8.1(b) above shall affect the agreement in Article V of the Long-Term Global Settlement and Compensation Agreement establishing full and fair compensation to the Tribes.

8.2 End of the Project.

When the Project can no longer be made capable, consistent with Prudent Utility Practice as determined (if necessary) by the arbitrator pursuant to Section 3.2(g), of producing electricity, or is not licensable, or when the Project is ended pursuant to Section 8.1, or when the Owners otherwise agree to end the Project, the Operator shall sell for removal all salable parts of the Project to the highest bidders. After deducting all costs of termination of the Project, including the cost of decommissioning, razing all structures and disposing of the debris and meeting all requirements of Applicable Law, the Operator shall close the Operating Trust Account and, if there are net proceeds, distribute to each Owner its Ownership Share of such proceeds. In the event such cost of ending the Project exceeds available funds, each Owner shall pay its Ownership Share of such costs incurred.

ARTICLE IX
TERM AND TERMINATION

9.1 Term.

This Agreement shall be effective ("Effective Date") upon the Transfer Date as defined in the Asset Purchase Agreement. The term of this Agreement ("Term") shall be from the Effective Date through the date of expiration or earlier termination of the New FERC License ("Termination Date"), provided that the Parties shall comply with any orders of any Governmental Authority with respect to any earlier termination and the costs of such compliance shall be Costs of Operation hereunder.

9.2 Termination.

This Agreement shall not be subject to termination by any party prior to the Termination Date except as expressly provided in Section 9.1 and Article VIII. Each of the Parties, to the extent not prohibited by Applicable Law, waives all rights now or hereafter existing, conferred by statute, common law or otherwise to quit, terminate or surrender this Agreement.

EXHIBIT 2

ARTICLE X
DEFAULT AND REMEDIES

10.1 Default.

(a) Upon failure of an Party to make any payment when due, fulfill any covenant, or, except as excluded by Section 13.1, perform any material obligation of a Party herein, any other Party may make written demand upon said Party.

(b) If the failure of a Party is to make a payment when due and such failure is not cured within five (5) days from the date of a demand pursuant to Section 10.1(a), it shall constitute a default at the expiration of such period.

(c) If the failure of a Party is to fulfill any covenant or to perform any other material obligation the non-performance of which is not excused by Section 13.1 hereof, and if (i) such material violation or breach has not been waived by the other Party, (ii) such material violation or breach is capable of being cured by the non-performing Party and (iii) the non-performing Party has failed (A) to cure such material violation or breach within thirty (30) days of receipt of written notice thereof by the other Party or (B) in the event a material breach cannot be cured despite diligent efforts within a thirty (30) day period, the non-performing Party has failed to initiate promptly and maintain continuously diligent efforts to cure such breach, then the failure shall, at the expiration of such period, constitute a default.

(d) If a Party in good faith disputes the existence or extent of a failure described in Section 10.1(a), it shall, within the applicable period set forth in Section 10.1 (b) or (c), make such payment or perform such obligation under written protest directed to the other Parties. Such dispute shall be resolved pursuant to Sections 7.1 through 7.3.

10.2 Remedies.

(a) An Owner in default shall have no right to use its Project Rights, nor to have representation on the Operating Committee, nor to exercise any other right of an Owner.

(b) If a default is limited to a failure of the defaulting Owner to make payments, the defaulting Owner's Ownership Share of Project Rights may be sold by the non-defaulting Owner during the period of default for the benefit of the defaulting Owner (to third parties or other Owners) and the proceeds applied to the amounts owed by such Owner. Payments not made when due may be advanced by the other Owners and, if so advanced, shall bear interest until paid at the rate of one percent (1%) per month or the highest lawful rate, whichever is lower.

(c) If a default involves failure of the defaulting Owner to fulfill any covenant or to perform any other material obligation the non-performance of which is not excused by Section 13.1 hereof, the defaulting Owner's Ownership Share of Project Rights may be used or sold by the non-defaulting Owner as they see fit during the period of the default, and the value of the defaulting Owner's Ownership Share of such Project Rights shall be an offsetting claim to the damages suffered by the non-defaulting Owner as a result of the default.

EXHIBIT 2

(d) In addition to the rights granted in this Section 10.2, any non-defaulting Party may take any action, in law or equity, to enforce this Agreement and, subject to the limitations expressed in this Agreement, to recover for any loss or damage, including reasonable attorneys' fees and costs incurred by reason of such default, both at trial and upon any appeal.

ARTICLE XI
INSURANCE

11.1 Project Property and Equipment.

The Operator shall obtain and maintain in force for the Owners and the Operator as their interests shall appear insurance for " all risks" of physical loss or damage to property and equipment part of or in any way related to the Project, with replacement cost coverage and otherwise in the same manner as the Operator insures its other owned and operated like facilities. All Owners shall be named insureds and loss payees as their interests may appear under all policies maintained pursuant to this Section 11.1.

11.2 Workers' Compensation, General Liability and Automobile Liability.

The Operator shall obtain and maintain the following insurance during the Term of this Agreement related to its activities as Operator:

(a) Workers' compensation insurance to comply with Oregon laws and employer's liability coverage for $2,000,000 each accident and $2,000,000 disease each employee. Coverage shall also be secured as specified in the United States Longshore and Harbor Workers' Act for work to be performed on or near navigable waters. (The Parties do not hereby represent or take the position that the Deschutes River is or is not navigable).

(b) General liability insurance, including coverage for contractual liability, Project operations, products and completed operations, with a combined single limit of $35,000,000 for personal and bodily injury and property damage per occurrence and in the aggregate. Any watercraft exclusion shall be deleted if service necessitates use of watercraft of any kind. Such general liability insurance may be in any reasonable combination of primary and excess liability policies. If the general liability policy is a "claims-made policy" and it is cancelled or not renewed, then the Operator shall make reasonable efforts to secure upon reasonable terms and conditions, including a reasonable premium, either a "tail policy" or a "sunrise endorsement." The Operator may, but shall not be required to, carry general liability insurance coverage its role as Operator in excess of the foregoing $35,000,000 limit. If the Operator does so, it shall offer the Tribes the option to contribute on an equitable basis to the cost of excess coverage up to a maximum limit of $65,000,000 as Costs of Operation. If the Tribes exercise such option, the indemnity described in Section 3.1(e)(iv) shall extend to such excess coverage subject to the maximum limit of $65,000,000. If the Tribes do not exercise such option, the indemnity described in Section 3.1(e)(iv) shall not extend to such excess coverage.

(c) Automobile liability to include coverage for all owned, non-owned and hired vehicles for $5,000,000 per accident. Such automobile liability insurance may be in any reasonable combination of primary and excess liability policies. The deductible shall not exceed $5,000 absent unanimous approval of the Operating Committee.

EXHIBIT 2

If, consistent with the manner in which the Operator insures its other owned and operated like facilities, the Operator provides any of the insurance required in Sections 11.2(a) and (b) through a self-insurance program, then any losses or damages shall be treated as Costs of Operation and shared by the Owners in accordance with their Ownership Shares.

11.3 Consequential Damages.

Unless the Operator insures its other owned and operated facilities for such risks pursuant to the coverage described in Section 11.1 above, in no event shall the Operator be required to obtain or maintain insurance to insure against consequential damages including, but not limited to, business interruption, loss of profits or revenue, loss of use of the Project or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or Claims of customers of the Owners for such damages and such claims from the Owners' customers.

11.4 Primary Insurance.

All insurance carried by the Operator pursuant to this Section 11, including that described in Section 11.2(b) to the extent of Operator's indemnification obligation specified in Section 3.1(e) (iv), shall be primary to any other available coverage. Any other available coverage maintained by any Owner shall not be contributory.

11.5 Costs of Operation.

Except as specified in Section 11.2(b) with respect to excess general liability coverage, the costs of all insurance maintained by the Operator pursuant to this Section 11 shall be treated as Costs of Operation.

11.6 Coverage to be Maintained by Owners.

In addition to insurance procured by the Operator pursuant to Sections 11.1 and 11.2 above, each of the Owners shall also procure the insurance described in paragraphs (a), (b) and (c) below related to its capacity and activities as an Owner of the Project.

(a) Workers' compensation insurance to comply with Oregon laws or Tribal laws, whichever are applicable, and employer's liability coverage for $2,000,000 each accident and $2,000,000 disease each employee. Coverage shall also be secured as specified in the United States Longshore and Harbor Workers' Act for work to be performed on or near navigable waters. (The Parties do not hereby represent or take the position that the Deschutes River is or is not navigable).

(b) General liability insurance, including coverage for contractual liability, products and completed operations, with a combined single limit of $5,000,000 for personal and bodily injury and property damage per occurrence. Any watercraft exclusion shall be deleted if service necessitates use of watercraft of any kind. Such general liability insurance may be in any reasonable combination of primary and excess liability policies.

EXHIBIT 2

(c) Automobile liability to include coverage for all owned, non-owned and hired vehicles for $5,000,000 per accident. Such automobile liability insurance may be in any reasonable combination of primary and excess liability policies.

Any Owner may provide the insurance required in this Section 11.6 through a self-insurance program with the permission of the other Owners, which shall not be unreasonably withheld.

11.7 Waiver of Subrogation.

Each Owner and the Operator shall require their insurance underwriters to waive all their rights of recovery, under subrogation or otherwise, against the Operator and the other Owner(s).

11.8 Status of Insurance.

The Operator shall keep the Owners informed of changes in and the status of insurance in force, and provided it does so, the Operator shall not be liable to any of the Owners for any failure to insure nor any inadequacy of coverage.

11.9 Supplemental Insurance.

Nothing in this Agreement shall prohibit any Owner or the Operator from procuring insurance that supplements the coverages required by this Agreement. The Party purchasing such supplemental coverage shall be solely responsible for the premiums therefor and shall solely be entitled to retain any payments related thereto from the insurance carrier.

11.10 Election to Purchase Separate Coverage.

Notwithstanding any other provision of this Agreement, either Owner may in its discretion elect not to participate in the insurance program the Operator is otherwise required to maintain pursuant to this Section 11. The electing Owner may make such election with respect to any one or more of the coverages the Operator is required to maintain pursuant to Sections 11.1 and 11.2. Any such election shall be in writing delivered to the Operator with reasonable advance notice under the circumstances and, assuming reasonable advance notice has been given, shall be effective upon the expiration of the current term of the subject policy, or such other date as the subject Owner and Operator may agree. Upon the effective date the electing Owner shall no longer be responsible for Costs of Operation attributable to the premiums for such policy and shall not be entitled to participate in any payments related thereto from the insurance carrier. In the event the electing Owner chooses not to participate in the general liability policy and coverage specified in Section 11.2 (b), then the indemnity obligation of the Operator specified in Section 3.1(e)(iv) shall immediately cease and be of no effect relative to such electing Owner.

EXHIBIT 2

ARTICLE XII
ASSIGNMENTS AND TRANSFERS

12.1 Assignments and Transfers.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by either Owner without the prior written consent of the other Owner hereto, which Owner may withhold its consent in its sole discretion, and any attempted assignment shall be void, except the following assignments and transfers which shall not require such consent:

(a) assignments and transfers which occur by operation of law;

(b) assignments and transfers by PGE of its rights, interests and obligations hereunder, in whole or in part, to an Affiliate;

(c) assignments and transfers by the Tribes of their rights to receive payments from PGE or the Tribes' Allocation of Project Rights hereunder, provided, that any such assignments and transfers by the Tribes shall not involve any mortgage, grant of a security interest or other encumbrance of the Tribes' title to the Project;

(d) assignments and transfers by PGE of all or any part of its interest in the Project to any mortgagee, trustee or secured party, as security for bonds or other indebtedness of PGE, present or future;

(e) assignments and transfers by PGE of all or any part of its interest hereunder to any entity acquiring all or a substantial portion of PGE's property;

(f) assignments and transfers by PGE to any entity into which or with which PGE is merged or consolidated;

(g) assignments and transfers by PGE to the State of Oregon, an agency thereof or to a trust, cooperative or other non-profit entity provided PGE has complied with Section 12.3 of this Agreement; or

(h) assignments and transfers by PGE of its Ownership Share of the Project to a for-profit entity provided PGE has complied with Section 12.2 of this Agreement.

Assignments and transfers shall not relieve an Owner of any obligation hereunder, except to the extent agreed in writing by the other Owners, provided that an otherwise valid assignment or transfer by PGE to a Person (a) having, as of the date of such assignment or transfer, a tangible net worth not less than that of PGE as of such date (or whose obligations hereunder are guaranteed by a Person having such tangible net worth), and (b) having an Investment Grade or higher rating on its senior, unsecured debt as of such date, shall automatically result in a full and complete release or PGE from all of its unmatured obligations hereunder and a novation of this Agreement between the Tribes and such assignee or transferee.

EXHIBIT 2

12.2 Right of First Refusal Upon Sale by PGE.

Upon the terms and conditions set forth in this Section 12.2, PGE shall afford the Tribes a right of first refusal to purchase all or any portion of PGE's Ownership Share in the Project that PGE chooses to sell ("Right of First Refusal").

(a) The Right of First Refusal provided for in this Section 12.2 shall apply only to a transfer by PGE described in Section 12.1(h) that does not meet any of the other criteria specified in Section 12.1(a)-(g). The Right of First Refusal shall not apply to a transfer by PGE described in Section 12.3.

(b) PGE shall not be required to afford the Tribes the First Right of Refusal unless PGE determines it would accept a third party offer. (If PGE conducted an auction, for example, and reserved the right to reject all bids, PGE could reject the highest bid and choose not to sell, either to the highest bidder or to the Tribes).

(c) PGE shall provide the Tribes notice of its intent to accept a third party offer for PGE's Ownership Interest in the Project and shall provide the Tribes a copy of the definitive agreement establishing the price and terms of the proposed transaction. The Tribes shall have forty-five days from the date of receipt from PGE of notice and the definitive agreement within which to conduct any due diligence and to decide whether to exercise the Right of First Refusal. A condition precedent to exercise of the Right of First Refusal and closing is that Tribes not be in default of the Global Settlement Agreement, the Power Purchase and Sale Agreements, this Agreement or any other material agreement to which the Tribes are a party, whether or not PGE is a counterparty. Unless the Tribes have notified PGE affirmatively in writing of their exercise of the Right of First Refusal within such forty-five (45) day period, the Tribes shall be deemed to have waived their Right of First Refusal with respect to the subject offer. To be effective, the Tribes' exercise of the Right of First Refusal must (i) be an unconditional acceptance to purchase the proffered assets on the same terms and conditions as contained in the definitive agreement referenced above (specifically including date of closing and payment terms), (ii) apply to the entire interest in the Pelton and Round Butte Facilities being transferred. (E.g., if PGE were transferring its entire Undivided 66.67% Interest, the Tribes would have to purchase that amount--they could not choose to purchase, say, half of that amount.) and (iii) be accompanied by payment of the topping fee described in Section 12.2(e) below. In addition, elements of this Ownership and Operation Agreement unique to the Tribes' sovereign status, such as jurisdiction and waiver of immunity, shall be added to the terms of the definitive agreement to be executed by the Tribes. To the extent the Tribes are legally precluded from complying with one or more terms of the definitive agreement between PGE and the third party, the Tribes shall provide PGE equivalent value in either alternative terms or money. Any disputes concerning equivalency shall be resolved by arbitration using the procedures specified in Section 7.3(d) of this Agreement.

(d) To provide PGE appropriate assurance that it will be able to obtain necessary regulatory approvals for a sale by PGE to the Tribes, at the time the Tribes exercise the Right of First Refusal the Tribes shall establish to PGE's reasonable satisfaction either (i) the Tribes have acquired the expertise necessary to operate the Project or (ii) the Tribes will within sixty days after their exercise of the Right of First Refusal enter into an agreement with a

EXHIBIT 2

competent third party, acceptable to FERC and the State of Oregon, to be the Project Operator. PGE shall have the right to reject the Tribes' exercise of the Right of First Refusal and proceed with PGE's proposed sale if the Tribes fail to provide either the assurance described in Section 12.2(d)(i) or that described in Section 12.2(d)(ii).

(e) To mitigate potential dampening of interest in any sale which dampening could be harmful to PGE's customers and/or shareholders and to provide funds that may be required to compensate an otherwise successful purchaser for its efforts to investigate and implement a purchase from PGE, upon their exercise of the Right of First Refusal the Tribes shall pay PGE a non-refundable "topping fee" equal to the greater of 5% of the sales price or a minimum of $4 million dollars.

(f) PGE shall have the right to reject the Tribes' exercise of the Right of First Refusal if the Tribes, having established to PGE's satisfaction that they will enter into an operating agreement with a competent third party pursuant to Section 12.2(d)(ii), nevertheless do not achieve such an agreement within the required sixty (60) day time frame. If PGE so rejects the Right of First Refusal pursuant to this Section 12.2(f), then (i) PGE may make the sale to the original purchaser or any other potential purchaser at whatever price and on whatever terms PGE deems appropriate and (ii) if PGE is unable to consummate the sale to the original purchaser on the same terms and conditions as those in the definitive agreement presented to the Tribes in accordance with Section 12.2(c) above, PGE shall be entitled to retain the topping fee paid by the Tribes pursuant to Section 12.2(e) above to compensate PGE for its expenses and for its lost opportunity to consummate the original sale. If PGE does not consummate the sale to the original purchaser or another purchaser at such time, then the Tribes' Right of First Refusal shall terminate and not apply to any future transfers by PGE.

(g) PGE shall have the same rights vis-a-vis the Tribes as it would vis-a-vis the proposed third party purchaser to terminate the purchase based on regulatory conditions on approval, as well as other conditions constituting a material adverse change. If PGE terminates the purchase pursuant to this Section 12.2(g) other than as a result of a material adverse change relating specifically to the Tribes, then (i) PGE may not make the sale to the original purchaser or any other potential purchaser, (ii) the Tribes' Right of First Refusal shall not terminate and shall apply to any future transfers by PGE and (iii) PGE shall promptly return to the Tribes the topping fee paid by the Tribes pursuant to Section 12.2(e).

(h) If Tribes exercise the foregoing Right of First Refusal and do not then complete the purchase, other than for reasons totally outside the reasonable control of Tribes, (i) PGE may make the sale to the original purchaser or any other potential purchaser at whatever price and on whatever terms PGE deems appropriate and (ii) if PGE is unable to consummate the sale to the original purchaser on the same terms and conditions as those in the definitive agreement presented to the Tribes in accordance with Section 12.2(c) above, PGE shall be entitled to retain the topping fee paid by the Tribes pursuant to Section 12.2(e) above to compensate PGE for its expenses and for its lost opportunity to consummate the original sale. If PGE does not consummate the sale to the original purchaser or another purchaser at such time, then the Tribes' Right of First Refusal shall terminate and not apply to any future transfers by PGE.

EXHIBIT 2

(i) The Tribes' Right of First Refusal is subject to changes in law and actions of governmental entities that might impair the exercise of such Right of First Refusal or the purchase of PGE's interest. In the event of such a change in law or action of Governmental Authorities that prevents exercise of such Right of First Refusal or the purchase of PGE's interest, (i) PGE may make a sale to the third party and (ii) regardless of whether it makes such a sale, PGE shall have no liability to the Tribes arising from such impairment of the Tribes' Right of First Refusal.

12.3 Acceleration of Tribes' First Purchase Option and Second Purchase Option.

Any sale by PGE of its Ownership Share of the Project to the State of Oregon, an agency thereof or to a trust, cooperative or other non-profit entity shall be subject to the right of the Tribes to exercise prior thereto the First Purchase Option and the Second Purchase Option, as these terms are defined in the Global Settlement Agreement. PGE shall notify the Tribes at least one hundred fifty (150) days in advance of the projected sale to one of the entities referred to in the immediately preceding sentence. The Tribes shall then have seventy-five days within which to exercise this option to exercise either or both the First Purchase Option and the Second Purchase Option as of a date no sooner than seventy-five (75), and no later than one hundred fifty (150) days, after the Tribes have given PGE notice of their election to exercise this option. The Tribes shall purchase the interest(s) from PGE, upon the same terms and conditions as those contained in the Asset Purchase Agreement, subject only to the following modifications:

(a) the date of closing, transfer of title and payment of the purchase price shall be the date specified in the Tribes' notice, or if not a Business Day, then the next Business Day thereafter;

(b) the Purchased Assets, as defined in the Asset Purchase Agreement, purchased by the Tribes shall be the Undivided 16.66% Interest in the Pelton and Round Butte Facilities and or the Undivided .02% Interest in the Pelton and Round Butte Facilities, as the case may be, as such facilities exist as of the closing;

(c) the Purchase Price, as defined in the Asset Purchase Agreement, shall be (i).2498 times PGE's Ownership Share of the Net Book Value of the Pelton and Round Butte Facilities as of the closing date, as reflected on PGE's books of account as of that date, with respect to a sale of the Undivided 16.66% Interest, plus (ii) .0004 times PGE's Ownership Share of the Net Book Value of the Pelton and Round Butte Facilities as of the closing date, as reflected on PGE's books of account as of that date, with respect to a sale of the Undivided .02% Interest, plus (iii) the commitment of the Tribes to pay PGE either (A) a sum of money agreed by them or (B) the net benefits PGE would have received if it had continued to receive the Project Rights associated with the Ownership Share sold to the Tribes during the period from the closing to the dates the Tribes would have been able to exercise the First Purchase Option and the Second Purchase Option pursuant to the terms of the Long-Term Global Settlement and Compensation Agreement. Such net benefits shall be determined by application of the following formula:

EXHIBIT 2

Annual Tribes Payment to PGE = (PS * Annual Energy Value)
- (PS/OP) * (GP + Additions - AD-DT) * CC)
- (PS * O&M)
- (PS * Depreciation)
- (PS/OP * Property Taxes)

Where,

PS = PGE Ownership Share percentage sold to the Tribes pursuant to this Section 12.3 (.1668 if both the First Purchase Option and Second Purchase Option are exercised, and .0002 if only the Second Purchase Option is exercised)

OP = PGE Project Ownership Share percentage just prior to the time of the sale

GP = PGE's gross plant in service value associated with OP just prior to the time of the sale

AD = PGE's accumulated depreciation associated with OP at the time of the sale plus "Depreciation" (as defined below) for the period subsequent to the sale

DT = PGE's deferred taxes associated with OP at the time of the sale plus deferred taxes PGE would have incurred but for the sale

Additions = Cumulative Capital Additions for OP subsequent to the time of the sale

Depreciation = Depreciation on plant & Capital Additions subsequent to the time of the sale

O&M = Total annual Project direct operation & maintenance expenses but not to exceed the average real Annual Project direct O&M for the last ten years of the New FERC License (determined by adjusting actuals to account for changes in the CPI) unless such excess is attributable to conditions imposed by the FERC license which follows the New FERC License (Budget trued up to actuals at year end)

CC = PGE's weighted average cost of capital, grossed up for income taxes, of 12%

Scheduled Hourly Project Energy = Available Project Energy pre-scheduled on hourly basis for the PGE OP

Hourly Market Price = Mid-Columbia hourly market price or appropriate substitute

Annual Energy Value = Annual sum (Scheduled Hourly Project Energy * Hourly Market Price)

For purposes of the monthly calculation the energy value would be for the specific month, O&M would be the budget spread equally over the year and trued up to actuals in the December billing, while the capital costs are assumed to be spread equally over the year with no true up during the year. Payments would be made on a monthly basis within 15 days of the end of the month.

EXHIBIT 2

ARTICLE XIII
MISCELLANEOUS

13.1 Effect of Force Majeure.

If any Party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such Party gives written notice and full details of the event to the other Party as soon as practicable after the occurrence of the event, then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch.

13.2 Mutual Covenants to Perform under Long-Term Global Settlement Compensation Agreement.

PGE hereby covenants to perform fully during the Term of this Agreement all of its obligations under the Long-Term Global Settlement and Compensation Agreement. The Tribes hereby covenant to perform fully during the Term of this Agreement all of their obligations under the Long-Term Global Settlement and Compensation Agreement.

13.3 Attorney Fees and Litigation Expenses.

In the event any action is commenced to recover damages or enforce any rights or obligations under this Agreement, then the prevailing Party in such action shall be entitled to recover its attorney fees, including the reasonable fees of in-house counsel, expert fees, and all reasonable out-of-pocket expenses incurred in enforcing the prevailing Party's rights under this Agreement, regardless of whether those fees, costs or expenses are otherwise recoverable as costs in the action, including all fees and expenses incurred in investigation and preparation of the action before it is filed and upon appeal.

13.4 Notices.

(a) Means of notification.

Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

To The Tribes:

Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

EXHIBIT 2

with a copy to:

Confederated Tribes of the Warm Springs Reservation
Secretary-Treasurer
P. O. Box C
Warm Springs, OR 97761

and a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To PGE:

Portland General Electric Company
Attention: Senior Vice President, Power Supply
1-World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1-World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

(b) Effective Time.

Notice given pursuant to this Section 13.4 shall be effective upon physical receipt by both of the remaining Party.

13.5 Waivers.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

EXHIBIT 2

13.6 No Reliance.

Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation or promise of the other Party or any other Person or entity, except as expressly stated in this Agreement.

13.7 Assumption of Risk.

In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, neither of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof.

13.8 Waiver of Defenses.

Upon the execution of this Agreement, the Parties release each other from any and all Claims relating to the formation and negotiation of this Agreement, including, but not limited to reformation, rescission, mistake of fact, or mistake of law. The Parties further agree that they waive and will not raise in any court, administrative body or other tribunal any Claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.

13.9 No Third-Party Beneficiaries.

None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any Person or entity not a Party to this Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

13.10 Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

13.11 Independent Counsel.

The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.

13.12 Entire Agreement.

This Agreement constitutes the complete and entire expression of agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, and communications, whether written or oral, which may have been made in connection with the subject matter of this Agreement, including, but not limited to, the First Amendment to the Ownership and Operation Agreement signed by the Parties and dated as of January 2, 2002, and the Second Amendment to the Ownership and Operation Agreement signed by the Parties and dated as of January 1, 2002, the terms of both of which have been incorporated into and superseded by this Agreement Any such representations or claims are hereby disclaimed. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION

By: Olney Patt, Jr.
Name: Olney Patt, Jr.
Title: Chairman Tribal Council

PORTLAND GENERAL ELECTRIC COMPANY

By: Peggy Y. Fowler
Name: Peggy Y. Fowler
Title: Chairman, CEO and President

EXHIBIT 2

EXHIBIT A

Round Butte / Pelton Operating Guidelines

These guidelines are intended to guide the operation of Round Butte and Pelton under typical circumstances. Extreme or unusual conditions may require deviations from these guidelines.

GENERATOR GUIDELINES

	Round Butte			Pelton		
	Unit#1	Unit#2	Unit#3	Unit#1	Unit#2	Unit#3
Generating Limits (Mw)						
Maximum						
Peak*	105	105	105	36	38	38
Normal	100	100	100	35	35	35
Forbidden Zone						
Top	60	60	60	30	30	30
Bottom	40	40	40	20	20	20
Minimum	20	20	20	15	15	15
Most Efficient*						
Top	90	90	90	35	35	35
Bottom	70	70	70	30	30	30

Notes:

- The Peak Maximum is the highest available output available to meet peak demands and to make temporary deliveries of contingency reserves to replace lost generation within the Northwest Power Pool. The availability and duration of the Peak Maximum is dependent on acceptable generator and transformer winding temperatures. The Plant Operators will take manual control over the output of the units (i.e. no AGC control) when operating above the Normal Maximum.
- Units outputs shall be within their most efficient ranges whenever possible.

	Round Butte			Pelton		
	Unit#1	Unit#2	Unit#3	Unit#1	Unit#2	Unit#3
Nominal Ramp Rates (Mw/Minute)						
Upward	20	20	20	8	8	8
Downward	20	20	20	8	8	8
Nominal Start Times * (Minutes)						
Time to Synchronized	4	4	4	2-3	2-3	2-3
Time to Full Output	6-8	6-8	6-8	6-8	6-8	6-8
Suggested Minimum On/Off Time* (Minutes)	30	30	30	30	30	30
Suggested Daily Starts* (starts/day)	< 4	< 4	< 4	< 4	< 4	< 4

Notes:

- Start times can be reduced to roughly half the nominal times when rapid response is necessary. More than one unit can be started simultaneously.
- The suggested values for minimum on/off times and daily starts reflect the adverse impact that frequent output changes have on the life expectancy of the units. Minimizing unit output changes should be a factor in scheduling and dispatching plans for the Deschutes projects. It is recognized, however, that changing real-time conditions will often require us to operate units outside these suggested values.

RESERVOIR GUIDELINES

	ReReg	Pelton Forebay Elevations (feet)	R Butte Forebay
Absolute Maximum	1435.0	1580.0	1945.0*
Normal Maximum	1435.0	1578.0	1945.0*
6/15 - 9/15 Minimum	1415.0	1576.0	1944.0*
Normal Minimum	1415.0	1576.0	1935.0*
Absolute Minimum	1408.0	1573.0*	1865.0
Transit Time from Above (minutes)	20	20	N.A.

Notes:

- A Round Butte forebay Emergency Maximum of 1945.5 feet can be made available by the Project Manager for flood control use.
- Oregon Department of Fish & Wildlife research "fish traps" can be damaged by improper Round Butte forebay elevations.
- Boats at Pelton Park may become stranded on rocks if the Pelton forebay elevation drops below 1575.0 feet.
- The minimum Round Butte forebay elevation is influenced by run-off expectations based on precipitation, snow pack, and expected temperatures. 1935.0 feet reflects the minimum elevation for normal precipitation, snow pack, and temperatures.

REREG STREAMFLOW RELEASE GUIDELINES

	July 1st -- February 28th	March 1st -- June 30th
Minimum Release (cubic feet/second)	smaller of 3,240 cfs* , OR actual inflows** to Round Butte	smaller of 3,680 cfs* , OR actual inflows** to Round Butte

Notes:

- Minimum releases are set to avoid reading fluctuations below license restrictions of 3,000 cfs and 3,500 cfs respectively.
- Inflows measurements fluctuate by as much as 100-200 cfs during the course of a normal day. Values for actual inflow should be the average of inflow measurements over a period of several hours. Changes in actual inflow should be marked by a sustained shift in inflow measurements.

	May 15 - October 31	Other Times
Maximum Hourly Change* (feet/hour)	0.05	0.10
Maximum Daily Change* (feet/day)	0.20	0.40
Time of Day for Changes*	1 hour after sunset through 1 hour before sunrise	same as 5/15-10/31 whenever possible.

Notes:

- These ReReg change guidelines are intended to minimize downstream river fluctuations which impact recreational users and therefore the public's perception how well PGE is fulfilling its obligations as a steward of natural resources. These guidelines must be considered in scheduling and dispatching plans for the Deschutes projects, and shall be complied with whenever possible.
- It may be necessary during emergency conditions or sudden large changes in actual inflows to deviate from these guidelines. Deviations shall be preapproved by the Project Manager whenever possible.

EXHIBIT B

Administrative and General Costs

See Attached

Allocation of PGE Administration & General Overhead Expenses

The allocation of PGE administration and general overhead expense is labor based. Any PGE labor directly charged to the "project" would be used as the numerator and PGE total company labor as the denominator. The resulting percentage would be applied to the Corporate Governance Base Costs to determine the amount of A&G to allocate to the Pelton / Round Butte Project. The allocation percentage for the project is initially calculated on a budget basis at the beginning of the year and trued up at the end of the year for actuals. The monthly charges for A&G are based on the actual costs charged to the accounts listed below.

The accounts that make up the Corporate Governance Base Costs are listed below:

Account	Description of Account
N44012	Provide Executive Oversight And Guidance
N44029	General Administration
N44072	Purchase Standard Office Supplies
N44108	General Support - Operating & Maintain WTC
N44151	Process Financial & Operating Information
N44154	Reporting Other Internal Financial & Forecasting
N44155	Reporting Other External Financial & Operating Information
N44156	Perform Purchasing Function
N44157	Process Accounts Payable
N44159	Manage Budget & Planning Process
N44161	Provide Business Support
N44162	Perform Internal Auditing
N44163	General Support - Manage Financial Information
N44166	Operating Information Delivery Systems - Non-allocable
N44173	Maintain A&G Technology Series
N44174	Build/Enhance A&G Technology Systems
N44194	Maintain Copiers - Non-Allocable
N44208	Provide Printing Services
N44221	Provide Mail Services
N44222	External Production Services - Costs
N44223	Provide Corp Phone Support/Conference Room
N44224	Provide Travel Services
N44225	Provide Internal Communications
N44226	General Support - Provide Services to Employees
N44394	Corporate A&G Secondaries

EXHIBIT "B"

EXHIBIT C
Wholesale Power Purchase and Sale Agreement No. 02-03-A
And Wholesale Power Purchase and Sale Agreement No. 02-06-A

See Attached

WHOLESALE POWER

PURCHASE AND SALE AGREEMENT

NO. 02-06-A

BETWEEN

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

AND

PORTLAND GENERAL ELECTRIC COMPANY

EXHIBIT 2

WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-06-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS 1

1.1 Definitions 1

1.2 Interpretations. 4

ARTICLE II TERM AND TERMINATION 5

2.1 Contract Term. 5

2.2 Delivery Term. 5

ARTICLE III REPRESENTATIONS AND WARRANTIES 5

3.1 Representations and Warranties 5

ARTICLE IV OBLIGATIONS AND DELIVERIES 7

4.1 Firm Energy. 7

4.2 Transmission Losses. 7

4.3 Notification of Scheduled Deliveries. 7

ARTICLE V TITLE AND RISK 8

5.1 Title and Risk of Loss. 8

5.2 Seller Warranties. 8

ARTICLE VI NONPERFORMANCE AND REMEDIES 8

6.1 Damages for Failure to Deliver or Receive. 8

ARTICLE VII DEFAULT 9

7.1 Default 9

7.2 Remedies. 9

7.3 Other Remedies. 11

7.4 Costs for Exercise of Rights. 11

7.5 Other Events 11

7.6 Set Off of Accounts. 12

ARTICLE VIII UNCONTROLLABLE FORCE 12

8.1 Performance Excused 12

EXHIBIT 2

8.2 Exclusions. 12
8.3 Notice. 13
8.4 Settlements. 13
ARTICLE IX WAIVER OF SOVEREIGN IMMUNITY 13
ARTICLE X LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES 14
ARTICLE XI DUTY TO MITIGATE DAMAGES 15
11.1 Mitigation 15
ARTICLE XII TAXES 15
12.1 Taxes. 15
ARTICLE XIII BILLING AND PAYMENT 15
13.1 Billing and Payment 15
13.2 Method of Payment. 15
13.3 Overdue Payments. 16
ARTICLE XIV ARBITRATION 16
14.1 Scope of Disputes to be Arbitrated. 16
14.2 Arbitration Process 16
ARTICLE XV MISCELLANEOUS 17
15.1 Assignment of Agreement. 17
15.2 Limitations on Recourse. 17
15.3 Audit Right 17
15.4 Winding Up Arrangements. 17
15.5 Notices. 18
15.6 Governing Law. 18
15.7 Waivers. 18
15.8 Severability. 18
15.9 Section Headings. 18
15.10 No Rights to Third Parties. 19
15.11 Parties Acting for Own Account. 19
15.12 Entire Agreement; Amendment. 19
15.13 Conditions of Performance. 19
EXHIBIT A

WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-06-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

This Wholesale Power Purchase and Sale Agreement No. 02-06-A (this "Agreement") is entered into effective as of November 13, 2001, (the "Effective Date") by and between Portland General Electric Company, ("PGE" or "Buyer"), and The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes" or "Seller"). PGE and Seller may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Tribes desire to sell, and PGE desires to purchase, Firm Capacity and Energy from the Tribes in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the premises and representations contained herein, the Parties agree hereby as follows:

ARTICLE I
Definitions

1.1 *Definitions*.

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

1.1.1 "*Affiliate*" shall mean, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this person, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.1.2 "*Agreement*" shall have the meaning set forth in the introductory paragraph above.

1.1.3 "*Bankruptcy Proceeding*" shall mean, with respect to a Party or entity, when such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

EXHIBIT 2

1.1.4 "*Business Day*" shall mean a calendar day other than days on which Federal Reserve member banks in Portland, Oregon are authorized or required by Law to be closed.

1.1.5 "*Claims*" shall mean all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to, during the term of, or after the termination of this Agreement.

1.1.6 "*Contract Day*" shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, inclusive, during the Delivery Term except for the six official NERC holidays.

1.1.7 "*Contract Price*" shall mean Thirty-six Dollars and Seventy Five Cents ($36.75) in U.S. dollars per MWh of Contract Quantity for four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from July 1, 2002 to December 31, 2006, inclusive.

1.1.8 "*Contract Quantity*" means a minimum and a maximum of four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day from July 1, 2002 through December 31, 2006.

1.1.9 "*Contract Term*" shall mean the term of this Agreement as set forth in Section 2.1.

1.1.10 "*Costs*" shall have the meaning defined in Section 7.2.5.

1.1.11 "*Day*" shall be defined as any 24-hour period commencing at 00:00 hours at the prevailing time at the Delivery Point.

1.1.12 "*Default*" shall have the meaning set forth in Section 7.1.

1.1.13 "*Defaulting Party*" shall have the meaning set forth in Section 7.1.

1.1.14 "*Delivery Point*" shall mean the Round Butte Bus Bar unless otherwise mutually agreed upon by the Parties.

1.1.15 "*Delivery Term*" shall have the meaning defined in Section 2.2.

1.1.16 "*Energy*" shall mean electric Energy expressed in megawatt hours (MWh).

1.1.17 "*Equitable Defenses*" shall mean any bankruptcy, insolvency, reorganization and other Laws affecting creditor's rights generally, and with regard to equitable remedies, the discretion of the court before which the proceedings to obtain same may be pending.

1.1.18 "*Fees*" shall mean Scheduling, imbalance or similar fees, charges or penalties imposed by third parties.

1.1.19 "*Firm Energy*" shall mean the only excuse for non-delivery or non-acceptance of Energy shall be the existence of an event of Uncontrollable Force, or the other Party's nonperformance.

1.1.20 "*Gains*" shall have the meaning defined in Section 7.2.5.

1.1.21 *"Heavy Load Hours"* shall mean hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, except for NERC designated holidays.

1.1.22 "*Interest Rate*" means, for any date, two percent over the per annum rate of interest equal to the Prime Rate; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable Law.

1.1.23 "*Law*" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

1.1.24 "*Legal Proceedings*" shall mean any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

1.1.25 *Light Load Hours"* shall mean all hours except for Heavy Load Hours.

1.1.26 "*Losses*" shall have the meaning defined in Section 7.2.5.

1.1.27 *"NERC"* means the North American Electric Reliability Council or any successor thereto.

1.1.28 "*Non-Defaulting Party*" shall have the meaning set forth in Section 7.1.1.

1.1.29 *"Ownership and Operation Agreement"* means the Agreement for the Ownership and Operation of the Pelton and Round Butte Dams and generating facilities between the Tribes and PGE.

1.1.30 *"PPT"* means Pacific Prevailing Time, that is, prevailing standard time or daylight savings time in the pacific time zone, as applicable.

1.1.31 "*Primary Transmission System*" shall mean the facilities immediately connected on each side of the Delivery Point through which Energy is Scheduled to be delivered or received pursuant to this Agreement.

1.1.32 "*Primary Transmission System Operator*" shall mean the entity or entities operating the Primary Transmission System.

1.1.33 "*Replacement Price*" shall have the meaning set forth in Section 6.1.1.

1.1.34 "*Sale Price*" shall have the meaning set forth in Section 6.1.2.

1.1.35 "*Schedule*" or "*Scheduled*" or "*Scheduling*" shall mean the act of Seller or Buyer of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given Day or Days during a Delivery Period at a specified Delivery Point.

1.1.36 "*Termination Payment*" shall have the meaning set forth in Section 7.2.2.

1.1.37 "*Transmission Providers*" shall mean collectively the entities providing transmission services for Buyer or Seller to or from the Delivery Point. Transmission Providers shall include Primary Transmission System Operators, sending and receiving Control Areas, intermediate Control Areas and other entities that own transmission or control transmission services provided by others.

1.1.38 "*Uncontrollable Force*" shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the Claiming Party), and which by the exercise of due diligence the Claiming Party, or third party, is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.

The only transmission-related events which can qualify as events for which performance of any obligation under this Agreement may be excused due to an Uncontrollable Force are events on a Primary Transmission System which directly affects firm transmission to or from the Delivery Point. Such events include, without limitation (except as otherwise provided herein), the loss, interruption or curtailment (in accordance with a Primary Transmission System Operator's applicable tariffs, applicable governing agreements or standard practice) of firm transmission on the Primary Transmission System delivering Energy to the Delivery Point or the Primary Transmission System receiving Energy from the Delivery Point.

As applied to any of the services provided hereunder, Uncontrollable Force specifically excludes the following: (i) loss of Buyer's markets or Buyer's inability economically to use or resell Energy purchased hereunder; (ii) Seller's inability to obtain the Contract Quantity from any particular generation resource or third party supplier: (iii).Seller's inability economically to use or resell Energy purchased hereunder; (iv) drought; (v) regulatory disallowance of the pass through of the costs of Energy or related costs; (vi) increases or decreases in Energy prices; (vii) loss, interruption or curtailment of a source or sources of supply; and (viii) the loss, interruption or curtailment, for any reason, of transmission service on systems other than on the Primary Transmission System.

1.2 *Interpretations*.

In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii). reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (iii) reference to any gender includes each other gender; (iv) reference to any

EXHIBIT 2

agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (v) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (vi) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (viii) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;" and (ix) reference to any law (including statutes and ordinances) means such law as amended, modified codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II
Term and Termination

2.1 *Contract Term*.

Subject to the provisions of Section 15.4 regarding winding-up arrangements, the term of this Agreement (the "Contract Term") shall begin on July 1, 2002 and shall remain in effect until December 31, 2006; *provided, however*, that this Agreement shall continue notwithstanding such termination until such time as all liabilities, obligations and rights related to or associated with any transactions entered into prior to the date of termination are complete and fully and finally discharged or have expired.

2.2 *Delivery Term*.

Delivery of Energy hereunder shall commence at 6:00:00 PPT on July 1, 2002 and shall end at 22:00:00 PPT on December 31, 2006.

ARTICLE III
Representations and Warranties

3.1 *Representations and Warranties*.

On the Effective Date of this Agreement each Party represents and warrants to the other Party that:

3.1.1 With regard to and the Tribes:

3.1.1.1 The Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as

EXHIBIT 2

amended by the Act of June 15, 1935 (49 Stat. 378). The Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934. Pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over Tribal Lands within the boundaries of the Warm Springs Indian Reservation as described in that certain Treaty between the United States of America and the Tribes and Bands of the Middle Oregon executed June 25, 1855;

3.1.1.2 The Tribes have full power and authority to enter into this Agreement, to perform their obligations hereunder and to consummate the transactions contemplated hereby, which transactions have been duly and validly authorized by the members of the Tribes and the Tribal Council of the Tribes and no other tribal action on the part of the Tribes is necessary. This Agreement has been duly and validly executed and delivered by the Tribes and this Agreement constitutes and upon the execution by the Tribes and PGE, will constitute a legal, valid and binding obligation of the Tribes enforceable against the Tribes in accordance with the terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles;

3.1.1.3 The execution and delivery by the Tribes of this Agreement, the performance by the Tribes of their obligations under this Agreement, the consummation of the transactions contemplated hereby will not: (1) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the constitution, bylaws or corporate charter of the Tribes; (2) require any consent, approval, authorization or permit or filing with or notification to any Governmental Authority; (3) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Tribes are a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (4) conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribes, including laws or regulations promulgated by the Tribes; and

3.1.1.4 There are no actions or proceedings pending or, to the knowledge of the Tribes, threatened against, relating to or affecting the Tribes which could reasonably be expected to result in the issuance of an order retraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

3.1.2 With regard to PGE:

3.1.2.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a transaction will be performed by it;

3.1.2.2 It has all regulatory authorizations necessary for it to legally enter into and perform its obligations under this Agreement;

3.1.2.3 The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

3.1.2.4 This Agreement when entered into in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

3.1.2.5 There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

3.1.2.6 There are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE IV
Obligations and Deliveries

4.1 *Firm Energy.*

Upon the commencement of deliveries pursuant to Section 2.2 through the remaining term of this Agreement, Seller shall make available to Buyer, and Buyer shall purchase the Contract Quantity. At Buyer's request, Energy may be scheduled for delivery in Light Load Hours and Heavy Load Hours at any rate, *provided however*, the rate shall not be in conflict with the Seller's scheduling rights contained in Section 4.2 and 5.6 of the Ownership and Operation Agreement. Seller's obligation to deliver the Contract Quantity shall be absolute and the only excuse for failure of Seller to deliver the Contract Quantity shall be an Uncontrollable Force or Buyer's failure to perform.

4.2 *Transmission Losses.*

Seller shall deliver 20 KWh to the Delivery Point for each MWh of Contract Quantity purchased under this Agreement. Such deliveries shall be full compensation for transmission losses assumed to be incurred by Buyer in transmitting the Contract Quantity from the Delivery Point to PGE's Bethel substation.

4.3 *Notification of Scheduled Deliveries.*

Seller shall notify Buyer of scheduled deliveries in accordance with Section 4.2 of the Ownership and Operation Agreement. In the event Seller supplies the Contract Quantity from a source other than the Pelton Round Butte generation facilities or the Pelton Reregulating Dam, unless otherwise agreed, Seller shall be obligated to Schedule with the appropriate Transmission Providers or arrange for Scheduling service and to deliver to the Primary Transmission System, which is delivering Energy to the Delivery Point, and Buyer shall be obligated to Schedule with the appropriate Transmission Providers or arrange for a Scheduling service and to receive from the Primary Transmission System, which is receiving Energy at the Delivery Point, the Contract

Quantity during each Day in accordance with the Transmission Provider's or Primary Transmission System Operator's notice requirements.

ARTICLE V
Title and Risk

5.1 *Title and Risk of Loss.*

Title to and risk of loss from Energy shall pass from Seller to Buyer at the Delivery Point.

5.2 *Seller Warranties.*

Seller warrants that it will transfer to Buyer good title to the Energy, free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point and that its sale is in compliance with all applicable laws and regulations. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

ARTICLE VI
Nonperformance and Remedies

6.1 *Damages for Failure to Deliver or Receive.*

Without limiting the rights of the non-breaching Party under the provisions of this Article 6 or otherwise, if either Party fails to deliver or receive or to provide, as the case may be, the quantities of Energy due under this Agreement, (thereby becoming the non-performing Party) the non-breaching Party shall, as promptly as practicable, but no longer than twenty-four (24) hours, give notice of such nonperformance to the non-performing Party. If the Parties agree and if commercially reasonable to do so in the context of its outstanding obligations, the non-breaching Party may allow the non-performing Party to remedy such nonperformance through an increase in subsequent hourly deliveries or receipts, as appropriate. If such a cure is not allowed by the non-breaching Party, or if allowed is not effected, the non-breaching Party shall be entitled to receive from the non-performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Force):

6.1.1 In the event that Seller fails to Schedule and deliver all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Buyer, Seller shall pay Buyer (on a date payment would otherwise be due from Buyer under this Agreement) an amount for each megawatt hour (MWh) of such deficiency equal to the positive difference, if any, of (i) the "Replacement Price", which is the price at which Buyer is, or would be, able to obtain comparable supplies of power at a commercially reasonable price (adjusted to reflect differences in transmission costs, if any) minus (ii) the Contract Price; *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.2 In the event that PGE fails to Schedule and to receive all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Seller, Buyer shall pay Seller (on a date payment would otherwise be due to Seller under this Agreement) an amount for each MWh of such deficiency equal to the positive difference, if any, of (i) the Contract Price minus (ii) the "Sales Price", which is the price at which, if any, Seller resells or otherwise disposes of all or part of the Contract Quantity not received by Buyer, *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.3 If payment pursuant to 6.1.1 and 6.1.2 is not made on a date payment would otherwise be due, the non-performing Party shall pay any amount due from it under this Article 6 within two (2) Business Days after the demand therefor is made.

ARTICLE VII
Default

7.1 *Default*.

A Default shall mean with respect to a Party (Defaulting Party):

7.1.1 Except as otherwise specified in the Ownership and Operation Agreement, as amended, the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (Non-Defaulting Party) and provided the payment is not the subject of a good faith dispute; or

7.1.2 Any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any material respect; or

7.1.3 Making a general assignment or arrangement for the benefit of creditors; or

7.1.4 The failure by the Defaulting Party to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 7) or its obligations to deliver or receive Energy, a remedy for which is provided in Article 6, and such failure is not excused by Uncontrollable Force or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or

7.1.5 The inability to pay its debts as they fall due; or

7.1.6 The Defaulting Party shall be subject to a Bankruptcy Proceeding.

7.2 *Remedies*.

In the event of a Default by the Tribes,

EXHIBIT 2

7.2.1 If a Default is limited to a failure of the Tribes to make payments, the Tribes' generation associated with their ownership share of the Pelton Dam and Round Butte Dam shall be sold during the period of Default for the benefit of PGE and the proceeds applied to the amounts owed by the Tribes.

7.2.2 Early Termination. Notwithstanding and in addition to any other provision of this Agreement, and except as provided below, if a Default occurs with respect to a Defaulting Party at any time during the term of this Agreement, the Non-Defaulting Party may, for so long as the Default is continuing:

7.2.2.1 Establish a date (which date shall be between one (1) and five (5) Business Days after the Non-Defaulting Party delivers notice) (Early Termination Date) on which the Agreement will terminate; and

7.2.2.2 Withhold any payments due in respect of this Agreement; *provided, however*, upon the occurrence of any Default listed in Sections 7.1.3, 7.1.5 or 7.1.6 as it may apply to any Party, this Agreement in respect thereof shall automatically terminate, without notice, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

7.2.3 Termination Payment. If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of the Agreement. The Gains, Losses and Costs shall be determined by comparing the value of the remaining term, Contract Quantity and Contract Prices remaining over the Contract Term had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for the Agreement. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Power futures contracts, quotations from leading dealers in Energy swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and difference in transmission. It is expressly agreed that a Party shall not be required to enter into replacement transactions in order to determine the Termination Payment, as defined below.

7.2.4 The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to the Agreement into a single net amount (Termination Payment) and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Agreement, the Non-Defaulting Party shall pay such excess to the Defaulting Party on or before the later of: (i) ten (10) days after the end of the month ending on or after the Early Termination Date or (ii) five (5) Business Days after receipt by the Defaulting Party of the Non-Defaulting Party's notice given above, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Defaulting Party disagrees with the calculation of the Termination

Payment, the issue shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 14 and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

7.2.5 As used herein with respect to each Party: (i) "Costs" shall mean, with respect to a Party, brokerage fees, commissions and other similar Transaction Costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Agreement, and attorney fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner; and (iii) "Losses" shall mean, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner. At the time for payment of any amount due under this Section 7.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

7.3 *Other Remedies.*

7.3.1 Notwithstanding any other provision of this Agreement, if Seller or Buyer fails to pay to the other Party any amount when due, the aggrieved Party shall have the right to: (i) suspend performance under the Agreement until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate; provided, however, if the non-paying Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

7.4 *Costs for Exercise of Rights.*

After the occurrence of a Default, the Defaulting Party shall be responsible for all reasonable costs and expenses actually incurred by the Non-Defaulting Party in connection with the exercise of its rights under this Agreement including, without limitation, reasonable attorneys' fees (including appeal) and disbursements.

7.5 *Other Events.*

In the event PGE is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by PGE under any provision of this Agreement, such action shall not operate to excuse PGE from performance of any obligation nor shall such action give rise to any right of PGE to any refund or retroactive adjustment of the Contract Price provided in this Agreement. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the Effective Date and such regulation either:

(i) renders this Agreement illegal or unenforceable in its entirety; or (ii) materially adversely affects the business of the affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, the affected Party, shall at such time have the right to declare an Early Termination Date in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an early Termination Date as stated above, the affected Party shall be liable for payment of the Termination Payment calculated by the non-affected Party as provided in Section 7.2. Notice that an Early Termination pursuant to Section 7.2 has occurred shall be given by the non-affected Party to the affected Party before the close of business on the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the affected Party against the non-affected Party.

7.6 *Set Off of Accounts.*

As an alternative to its rights under Sections 7.2 and 7.3 and without prejudice to its exercise of its rights under such Sections at any time, the Non-Defaulting Party may from time to time set off any or all amounts which the Defaulting Party owes to it (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due) provided that any amount not then due which is included in such setoff shall be discounted to the prime rate (as disclosed by U.S. Bank from time to time) at the time of setoff (to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

ARTICLE VIII
Uncontrollable Force

8.1 *Performance Excused.*

Except with regard to a Party's obligation to make payments when due, neither Party shall be considered to be in Default in the performance of any obligations under this Agreement when a failure of performance shall be due to an Uncontrollable Force. In the event either Party hereto is prevented, wholly or in part, by an Uncontrollable Force from carrying out its obligations under this Agreement, it is agreed that upon such Party's giving notice and full details of such Uncontrollable Force as promptly as practicable, but not later than twenty-four (24) hours after the discovery of the effects of an Uncontrollable Force or the occurrence of the cause relied on, whichever is later, the Party giving such notice shall be relieved of its obligations insofar as they are affected by such Uncontrollable Force during the continuance of any inability so caused from its inception but for no longer period. The Party claiming Uncontrollable Force shall remedy the Uncontrollable Force with all reasonable dispatch.

8.2 *Exclusions.*

Neither Party shall be entitled to the benefit of this Article 8 under any of the following circumstances:

8.2.1 To the extent that the inability was caused by the negligence of the Party claiming relief;

8.2.2 To the extent that the inability was caused by the Party claiming relief having failed to remedy the condition acting commercially reasonably and with reasonable dispatch;

8.2.3 To the extent the event constituting Uncontrollable Force was intentionally initiated or intentionally acquiesced in by the Party claiming relief for the purpose of allowing that Party to claim Uncontrollable Force; or

8.2.4 If the inability was caused by a Party's lack of funds.

8.3 *Notice*.

The Party giving notice of Uncontrollable Force shall state in the notice required in Section 8.1, or if not practicable, in a second notice delivered by facsimile, telecopier or in writing not more than twenty-four (24) hours after the initial notice, the nature of the Uncontrollable Force, the date of its commencement and the anticipated duration if ascertainable and the actions being taken to mitigate the effects of the Uncontrollable Force. If requested by the other Party, the Party claiming Uncontrollable Force shall provide a written report on the event of Uncontrollable Force including the cause, the actions taken to mitigate its effects and other information as may be reasonably requested by the other Party to evaluate the claim of Uncontrollable Force.

8.4 *Settlements*.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of commercially reasonable efforts in restoring normal operating conditions shall not require the settlement of strikes or lockouts by acceding to the terms of the opposing Party when such is inadvisable in the discretion of the Party having the difficulty.

ARTICLE IX
Waiver of Sovereign Immunity

The Tribes acknowledge and agree that in entering into this Agreement they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS,

INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (A) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (B) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND ANY TRANSACTION HEREUNDER AND (C) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER.

ARTICLE X
Limitations of Remedies, Liability and Damages

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW OR OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT

OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

ARTICLE XI
Duty to Mitigate Damages

11.1 *Mitigation.*

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE XII
Taxes

12.1 *Taxes.*

The Contract Price shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes applicable to the delivery of Energy arising prior to the Delivery Point. If Buyer is required to remit such tax, the amount shall be deducted from any sums due to Seller. Seller shall indemnify, defend and hold harmless Buyer from any Claims for such taxes. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all taxes applicable to the delivery of Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize taxes.

ARTICLE XIII
Billing and Payment

13.1 *Billing and Payment.*

On or before the tenth (10th) day of each month following an Invoice Month, Seller shall send to Buyer an invoice setting forth the quantity of Energy which was Scheduled, the Contract Price or taxes, if applicable, Seller is obligated by Law to collect from Buyer, and the total amount due from Buyer.

13.2 *Method of Payment.*

PGE shall remit the amount due by wire or electronic fund transfer, pursuant to Seller's invoice instructions, by the later of the twentieth (20th) day of the calendar month in which the

invoice was rendered or the tenth (10th) calendar day following the presentation of such invoice, provided that if such day is not a Business Day, payment is due on the next Business Day following that date. Wire or electronic fund transfers shall be by FEDWIRE or other electronic transfer service that assures immediately available funds to Seller on no later than the due date.

13.3 *Overdue Payments*.

Overdue payments shall bear interest at the Interest Rate from and including the due date to, but excluding the date of, payment on the unpaid portion.

ARTICLE XIV
Arbitration

14.1 *Scope of Disputes to be Arbitrated*.

Any dispute or need for an interpretation arising out of Article 6 and Article 7 of this Agreement pertaining to the calculation of a Termination Payment or a payment required thereunder shall be submitted to binding arbitration. DISPUTES OTHER THAN THOSE SPECIFICALLY REFERENCED IN THE FOREGOING SENTENCE SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THIS ARTICLE 14.

14.2 *Arbitration Process*.

Arbitration pursuant to this Article 14 shall be by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within fourteen (14) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the Portland Arbitration Service (the "PSA"). Such arbitration shall be held in Portland, Oregon. The rules of the PSA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement; (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment; (iii) the arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties; (iv) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives; and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to the arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

EXHIBIT 2

ARTICLE XV
Miscellaneous

15.1 *Assignment of Agreement.*

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (which consent shall not unreasonably be withheld); *provided, however*, either Party may, without consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by all terms and conditions hereof.

15.2 *Limitations on Recourse.*

The Tribes hereby pledge all their Pelton Round Butte Project Rights ("Project Rights"), as they are defined in the Ownership and Operation Agreement to satisfy any and all obligations they may have to PGE under this Agreement and otherwise with respect to the Pelton Round Butte Project. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under this Agreement initially from the Tribes' Project Rights and to the extent the Tribes' Project Rights are insufficient to satisfy PGE's outstanding claims, PGE shall next seek satisfaction from the Tribes' rights in the Pelton Reregulating Dam generation. In the event the a Claim has not been satisfied as of the expiration of the term of this Agreement, PGE's rights pursuant to this Section 15.2 shall continue notwithstanding the termination of this Agreement until such time as all liabilities, obligations and rights related to or associated with the Agreement prior to the date of termination are satisfied. The provisions of this Section 15.2 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

15.3 *Audit Right.*

Each Party shall have the right, at its sole cost and expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement during the immediately preceding twenty-four (24) months. For all transactions pursuant to this Agreement, the Parties shall retain all relevant records for twenty-four (24) months following each Delivery Period.

15.4 *Winding Up Arrangements.*

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect following the expiration or termination of this Agreement to the extent necessary to give full force and effect to the rights and obligations undertaken by the Parties herein.

15.5 *Notices*.

All notices, requests, statements or payments shall be made as specified in Exhibit A. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

15.6 *Governing Law*.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW, EXCEPT TO THE EXTENT SUCH OREGON LAWS MAY BE PREEMPTED BY THE LAWS OF THE UNITED STATES OF AMERICA.

15.7 *Waivers*.

No waiver by either Party, either express or implied, of any one or more Defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future Default or Defaults, whether of a like or a different character. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition herein, notwithstanding any course of dealing or custom of the trade.

15.8 *Severability*.

If any provision of this Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other Party or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by Law.

15.9 *Section Headings*.

Section headings are for the convenience of reference only and shall not affect the interpretation of this Agreement.

15.10 *No Rights to Third Parties.*

The provisions of this Agreement shall not impart rights enforceable by any person or organization not a Party or bound as a Party except for a permitted successor assignee of a Party bound by this Agreement.

15.11 *Parties Acting for Own Account.*

The Parties acknowledge that each Party is acting for its own account, and that each has made its own independent decision to enter into this Agreement and to whether this Agreement are appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each Party warrants that it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of this Agreement. Neither Party is relying on any communications (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement. The Parties acknowledge that neither is acting as a fiduciary, as an advisor or in an agency capacity with respect to the other Party.

15.12 *Entire Agreement; Amendment.*

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior agreements with respect heréto. This Agreement may be modified only by a written agreement executed by both Parties hereto.

15.13 *Conditions of Performance.*

Performance by any Party under this Agreement is conditioned on performance then due by the other Party hereto under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

PORTLAND GENERAL ELECTRIC COMPANY

By: Ronald W. Jones
Name: RONALD W JONES
Title: VICE PRESIDENT

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: Olney Patt, Jr.
Name: Olney Patt, Sr. Jr.
Title: Tribal Council Chairman

EXHIBIT A
to the
Wholesale Power Purchase and Sale Agreement
between
The Confederated Tribes of the Warm Springs Reservation
and
Portland General Electric Company

NOTICES AND PAYMENT

Portland General Electric Company:

NOTICES & CORRESPONDENCE
Portland General Electric Company
Attn: Power Operations
121 SW Salmon Street
Portland, OR 97204
Fax No.: (503) 464-2605
Phone No.: (503) 464-7358

INVOICES:
Portland General Electric Company
Attn: Accounts Payable
121 SW Salmon Street
Portland, OR 97204

PAYMENTS (US Dollars)
U.S. Bank
for Portland General Electric
ABA Routing No.: 123000220
Account No.: 153600063512

Confirmation: Cash Management
Phone No.: 503-464-7085 or 503-464-7760

Seller:

NOTICES & CORRESPONDENCE

_____
Attn: _____
_____
_____
Fax No.: _____
Phone No.: _____

INVOICES

_____
Attn: _____
_____
_____
Fax No: _____
Phone No.: _____

PAYMENTS

_____
ABA No.: _____
Account No.: _____
Confirmation: _____
Phone No.: _____

or to such other address as Seller or PGE shall from time to time designate by letter properly addressed.

EXHIBIT D

PROMISSORY NOTE

EXHIBIT D

PROMISSORY NOTE

January 1, 2002

FOR VALUE RECEIVED, the undersigned Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body, the Tribal Council ("Maker"), promises to pay to the order of Portland General Electric Company, an Oregon corporation ("Payee"), the principal amount of Twenty Four Million Nine Hundred and Six Dollars ($24,906,000.00), plus or minus any Adjustment Amount as set forth in Section 1 hereof, plus interest on the unpaid principal balance hereof at the rate and in the manner described in this Promissory Note (this "Note").

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities, as Amended and Restated, dated as of January 1, 2002, by and between Maker and Payee (the "Ownership Agreement"), and is subject to the terms and conditions thereof. Capitalized terms not otherwise defined in this Note have the meanings specified in the Ownership Agreement.

1. Adjustment to Principal Amount. Any Adjustment Amount payable by Payee under Section 3.4 of the Asset Purchase Agreement shall be deemed to be a reduction in the principal amount hereunder, and any Adjustment Amount payable by Maker under said Section 3.4 shall be deemed to be an increase in the principal amount hereunder, in each case as of the date hereof. The parties shall sign an addendum to this Note promptly following the final determination of the Adjustment Amount setting forth the adjusted principal and monthly payments hereunder.

2. Interest Rate. The outstanding principal balance hereof shall bear interest at the rate of eight and one half percent (8.5%) per annum until the day that is one (1) year from the date of this Note, and thereafter at the rate of twelve and seventy-one one-hundredths percent (12.71%) per annum. Interest hereunder shall be compounded annually and shall be determined on the basis of a 365- or 366-day year, as applicable.

3. Payment Schedule. The outstanding principal of and interest on this Note shall be payable in monthly payments of $542,641.36, adjusted as necessary to reflect level amortization of the adjusted principal amount hereof determined in accordance with Section 1 of this Note. Payments shall commence on February 1, 2002, and shall be made on the same day of each and every month thereafter until the earlier of January 1, 2007 or the day prior to

EXHIBIT 2

any sale or transfer of Maker's Ownership Share (the "Maturity Date"), at which time the entire outstanding principal balance of this Note, together with all principal, accrued and unpaid interest, late charges and other amounts that may become payable under this Note shall be due and payable in full. In the event that Maker has made one or more payments hereunder prior to the final determination of any Adjustment Amount, the first monthly payment subsequent to such final determination shall be increased or decreased, as applicable, to account for the amount by which Maker has overpaid or underpaid based upon the adjusted amortization schedule.

4. Prepayment. This Note may be prepaid in whole or in part at any time on or before the Maturity Date.

5. Overdue Amounts. Any overdue principal of and, to the extent permitted by law, overdue interest on the outstanding principal of this Note will bear interest before and after judgment, payable on demand, for each day until paid at a rate of twelve and seventy-one one-hundredths percent (12.71%) per annum.

6. Default. Any of the following, without notice or demand of any kind, shall constitute a default under this Note (an "Event of Default"):

(a) Maker shall fail to make any payment required hereunder when due;

(b) Maker shall be in default under Section 10.1 of the Ownership Agreement;

(c) Maker shall be in default with respect to its obligations concerning the sale of long-term bonds under Section 5.18 of the Ownership Agreement;

(d) Maker shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of its property, or shall generally be unable to or fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors;

(e) Maker shall file a voluntary petition in bankruptcy, or seek to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code, or under any state or other Federal law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or other Federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Maker and is not dismissed, stayed or vacated within sixty days thereafter; Maker shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Maker shall be adjudicated a bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under the

EXHIBIT 2

Bankruptcy Code or any other applicable state or Federal law relating to bankruptcy, reorganization or other relief for debtors.

Upon the occurrence of an Event of Default, the entire outstanding principal balance of this Note, together with all accrued interest, costs, late charges and other amounts that may become payable under the terms of this Note shall, at the option of the Payee, become due and payable forthwith, without notice, provided that in the case of any of the Events of Default specified in clause (d) or (e) above, without any notice to Maker or any other act by Payee, this Note shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Maker. No failure to exercise such option shall be deemed a waiver on the part of the Payee hereof of any right accruing thereafter.

7. Expenses. Maker agrees to pay any and all costs, including without limitation attorneys' fees and expenses at trial, or on any appellate review, incurred by Payee or any holder of this Note in enforcing this Note and collecting sums due under this Note.

8. Waiver. Maker hereby waives presentment, demand of payment, notice of dishonor, protest, notice of nonpayment and any and all other notices and demands whatsoever. MAKER ACKNOWLEDGES THAT THE WAIVER OF IMMUNITY PROVISIONS IN SECTION 7.1 OF THE OWNERSHIP AGREEMENT ARE APPLICABLE TO ITS OBLIGATIONS UNDER THIS NOTE.

9. Governing Law and Validity. This Note shall be governed by and construed in accordance with the laws of the State of Oregon and the United States of America. If one or more of the provisions contained in this Note shall be for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Note shall be construed as if such invalid, illegal or unenforceable provisions had never been included.

IN WITNESS WHEREOF, Maker has executed this Note as of the date set forth above.

MAKER

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: Olney Patt, Jr.
Name: Olney Patt, Jr.
Title: Chairman Tribal Council

EXHIBIT 2

WHOLESALE POWER

PURCHASE AND SALE AGREEMENT

NO. 02-03-A

BETWEEN

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

AND

PORTLAND GENERAL ELECTRIC COMPANY

EXHIBIT 2

WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-03-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS 1
1.1 Definitions. 1
1.2 Interpretations. 5
ARTICLE II TERM AND TERMINATION 5
2.1 Contract Term. 5
2.2 Delivery Term. 5
ARTICLE III REPRESENTATIONS AND WARRANTIES 6
3.1 Representations and Warranties. 6
ARTICLE IV OBLIGATIONS AND DELIVERIES 7
4.1 Firm Energy. 7
4.2 Transmission Losses. 8
4.3 Transmission Costs. 8
4.4 Notification of Scheduled Deliveries. 8
ARTICLE V TITLE AND RISK 8
5.1 Title and Risk of Loss. 8
5.2 Seller Warranties. 8
ARTICLE VI NONPERFORMANCE AND REMEDIES 9
6.1 Damages for Failure to Deliver or Receive. 9
ARTICLE VII DEFAULT 9
7.1 Default. 9
7.2 Remedies. 10
7.3 Other Remedies. 12
7.4 Costs for Exercise of Rights. 12
7.5 Other Events. 12
7.6 Set Off of Accounts. 12
ARTICLE VIII UNCONTROLLABLE FORCE 13

EXHIBIT 2

8.1 Performance Excused. 13
8.2 Exclusions. 13
8.3 Notice. 13
8.4 Settlements. 14
ARTICLE IX WAIVER OF SOVEREIGN IMMUNITY 14
ARTICLE X LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES 14
ARTICLE XI DUTY TO MITIGATE DAMAGES 15
11.1 Mitigation. 15
ARTICLE XII TAXES 15
12.1 Taxes. 15
ARTICLE XIII BILLING AND PAYMENT 16
13.1 Billing and Payment. 16
13.2 Method of Payment. 16
13.3 Overdue Payments. 16
ARTICLE XIV ARBITRATION 16
14.1 Scope of Disputes to be Arbitrated. 16
14.2 Arbitration Process. 17
ARTICLE XV MISCELLANEOUS 17
15.1 Assignment of Agreement. 17
15.2 Limitations on Recourse. 17
15.3 Audit Right. 18
15.4 Winding Up Arrangements. 18
15.5 Notices. 18
15.6 Governing Law. 18
15.7 Waivers. 19
15.8 Severability. 19
15.9 Section Headings. 19
15.10 No Rights to Third Parties. 19
15.11 Parties Acting for Own Account. 19
15.12 Entire Agreement; Amendment. 19
15.13 Conditions of Performance. 20
EXHIBIT A

EXHIBIT 2

WHOLESALE POWER PURCHASE AND SALE AGREEMENT
NO. 02-03-A
BETWEEN
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
AND
PORTLAND GENERAL ELECTRIC COMPANY

This Wholesale Power Purchase and Sale Agreement No. 02-03-A (this "Agreement") is entered into effective as of July 16, 2001, (the "Effective Date") by and between Portland General Electric Company, ("PGE" or "Buyer"), and The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes" or "Seller"). PGE and Seller may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Tribes desire to sell, and PGE desires to purchase, Firm Capacity and Energy from the Tribes in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the premises and representations contained herein, the Parties agree hereby as follows:

ARTICLE I
Definitions

1.1 *Definitions*.

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.1:

1.1.1 "*Affiliate*" shall mean, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this person, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.1.2 "*Agreement*" shall have the meaning set forth in the introductory paragraph above.

1.1.3 "*Bankruptcy Proceeding*" shall mean, with respect to a Party or entity, when such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

EXHIBIT 2

1.1.4 "*Business Day*" shall mean a calendar day other than days on which Federal Reserve member banks in Portland, Oregon are authorized or required by Law to be closed.

1.1.5 "*Claims*" shall mean all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to, during the term of, or after the termination of this Agreement.

1.1.6 *"Contract Day"* shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, inclusive, during the Delivery Term except for the six official NERC holidays.

1.1.7 "*Contract Price*" shall mean (1) Ninety Dollars ($90.00) in U.S. dollars per MWh of Contract Quantity for the first four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from January 1, 2002 to March 30, 2002 inclusive, (2) Sixty-Two Dollars and Fifty Cents ($62.50) in U.S. Dollars for the second four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from January 1, 2002 to March 30, 2002, inclusive and (3) Fifty Dollars ($50.00) in U.S. dollars per MWh of Contract Quantity for the first four hundred (400) MWhs of Heavy Load Hour Firm Energy per Day delivered from April 1, 2002 to June 29, 2002 inclusive.

1.1.8 *"Contract Quantity"* means a minimum and a maximum of eight hundred (800) MWhs of Heavy Load Hour Firm Energy per Day from January 1 to March 30, 2002 inclusive and a minimum and a maximum of four hundred (400) MWhs of Heavy Load Hour Firm Energy from April 1 to June 29 inclusive, plus such additional deliveries as are required for transmission losses pursuant to Paragraph 4.2.

1.1.9 *"Contract Term"* shall mean the term of this Agreement as set forth in Section 2.1.

1.1.10 "*Costs*" shall have the meaning defined in Section 7.2.4.

1.1.11 "*Day*" shall be defined as any 24-hour period commencing at 00:00 hours at the prevailing time at the Delivery Point.

1.1.12 "*Default*" shall have the meaning set forth in Section 7.1.

1.1.13 "*Defaulting Party*" shall have the meaning set forth in Section 7.1.

1.1.14 "*Delivery Point*" shall mean the Round Butte Switchyard 230 kV bus unless otherwise mutually agreed upon by the Parties.

1.1.15 *"Delivery Term"* shall have the meaning defined in Section 2.2.

1.1.16 "*Energy*" shall mean electric Energy expressed in megawatt hours (MWh).

1.1.17 "*Equitable Defenses*" shall mean any bankruptcy, insolvency, reorganization and other Laws affecting creditor's rights generally, and with regard to equitable remedies, the discretion of the court before which the proceedings to obtain same may be pending.

1.1.18 "*Fees*" shall mean Scheduling, imbalance or similar fees, charges or penalties imposed by third parties.

1.1.19 "*Firm Energy*" shall mean the only excuse for non-delivery or non-acceptance of Energy shall be the existence of an event of Uncontrollable Force, or the other Party's nonperformance.

1.1.20 "*Gains*" shall have the meaning defined in Section 7.2.4.

1.1.21 *"Heavy Load Hours"* shall mean hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, except for NERC designated holidays.

1.1.22 "*Interest Rate*" means, for any date, two percent over the per annum rate of interest equal to the Prime Rate; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable Law.

1.1.23 "*Law*" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

1.1.24 "*Legal Proceedings*" shall mean any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

1.1.25 *Light Load Hours"* shall mean all hours except for Heavy Load Hours.

1.1.26 "*Losses*" shall have the meaning defined in Section 7.2.4.

1.1.27 *"Mid-C"* shall mean the Mid-Columbia trading hub.

1.1.28 *"NERC"* means the North American Electric Reliability Council or any successor thereto.

1.1.29 "*Non-Defaulting Party*" shall have the meaning set forth in Section 7.1.1.

1.1.30 *"Ownership and Operation Agreement"* means the Agreement for the Ownership and Operation of the Pelton and Round Butte Dams and generating facilites between the Tribes and PGE.

1.1.31 *"PPT"* means Pacific Prevailing Time, that is, prevailing standard time or daylight savings time in the pacific time zone, as applicable.

1.1.32 "*Primary Transmission System*" shall mean the facilities immediately connected on each side of the Delivery Point through which Energy is Scheduled to be delivered or received pursuant to this Agreement.

1.1.33 "*Primary Transmission System Operator*" shall mean the entity or entities operating the Primary Transmission System.

1.1.34 "*Replacement Price*" shall have the meaning set forth in Section 6.1.1.

1.1.35 "*Sale Price*" shall have the meaning set forth in Section 6.1.2.

1.1.36 "*Schedule*" or "*Scheduled*" or "*Scheduling*" shall mean the act of Seller or Buyer of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given Day or Days during a Delivery Period at a specified Delivery Point.

1.1.37 "*Termination Payment*" shall have the meaning set forth in Section 7.2.2.

1.1.38 "*Transmission Providers*" shall mean collectively the entities providing transmission services for Buyer or Seller to or from the Delivery Point. Transmission Providers shall include Primary Transmission System Operators, sending and receiving Control Areas, intermediate Control Areas and other entities that own transmission or control transmission services provided by others.

1.1.39 "*Uncontrollable Force*" shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the Claiming Party), and which by the exercise of due diligence the Claiming Party, or third party, is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.

The only transmission-related events which can qualify as events for which performance of any obligation under this Agreement may be excused due to an Uncontrollable Force are events on a Primary Transmission System which directly affects firm transmission to or from the Delivery Point. Such events include, without limitation (except as otherwise provided herein), the loss, interruption or curtailment (in accordance with a Primary Transmission System Operator's applicable tariffs, applicable governing agreements or standard practice) of firm transmission on the Primary Transmission System delivering Energy to the Delivery Point or the Primary Transmission System receiving Energy from the Delivery Point.

As applied to any of the services provided hereunder, Uncontrollable Force specifically excludes the following: (i) loss of Buyer's markets or Buyer's inability economically to use or resell Energy purchased hereunder; (ii) Seller's inability to obtain the Contract Quantity from any particular generation resource or third party supplier: (iii) Seller's inability economically to use or resell Energy purchased hereunder; (iv) drought; (v) regulatory disallowance of the pass through of the costs of Energy or related costs; (vi) increases or decreases in Energy prices; (vii) loss, interruption or curtailment of a source or sources of

supply; and (viii) the loss, interruption or curtailment, for any reason, of transmission service on systems other than on the Primary Transmission System.

1.2 *Interpretations*.

In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii). reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (iii) reference to any gender includes each other gender; (iv) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (v) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (vi) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (viii) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;" and (ix) reference to any law (including statutes and ordinances) means such law as amended, modified codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

ARTICLE II
Term and Termination

2.1 *Contract Term*.

Subject to the provisions of Section 14.3 regarding winding-up arrangements, the term of this Agreement (the "Contract Term") shall begin on January 1, 2002 and shall remain in effect until June 29, 2002; *provided, however*, that this Agreement shall continue notwithstanding such termination until such time as all liabilities, obligations and rights related to or associated with any transactions entered into prior to the date of termination are complete and fully and finally discharged or have expired.

2.2 *Delivery Term*.

Delivery of Energy hereunder shall commence at 06:00:00 PPT on January 1, 2002 and shall end at 22:00:00 PPT on June 29, 2002.

ARTICLE III
Representations and Warranties

3.1 *Representations and Warranties.*

On the Effective Date of this Agreement each Party represents and warrants to the other Party that:

3.1.1 With regard to and the Tribes:

3.1.1.1 The Tribes are a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribes on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378). The Tribes ratified on April 23, 1938 a corporate charter issued to them by Interior pursuant to Section 17 of such Act of June 18, 1934. Pursuant to the foregoing authorities the Tribes exercise governmental and corporate powers over Tribal Lands within the boundaries of the Warm Springs Indian Reservation as described in that certain Treaty between the United States of America and the Tribes and Bands of the Middle Oregon executed June 25, 1855;

3.1.1.2 The Tribes have full power and authority to enter into this Agreement, to perform their obligations hereunder and to consummate the transactions contemplated hereby, which transactions have been duly and validly authorized by the members of the Tribes and the Tribal Council of the Tribes and no other tribal action on the part of the Tribes is necessary. This Agreement has been duly and validly executed and delivered by the Tribes and this Agreement constitutes and upon the execution by the Tribes and PGE, will constitute a legal, valid and binding obligation of the Tribes enforceable against the Tribes in accordance with the terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles;

3.1.1.3 The execution and delivery by the Tribes of this Agreement, the performance by the Tribes of their obligations under this Agreement, the consummation of the transactions contemplated hereby will not: (1) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the constitution, bylaws or corporate charter of the Tribes; (2) require any consent, approval, authorization or permit or filing with or notification to any Governmental Authority; (3) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Tribes are a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (4) conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribes, including laws or regulations promulgated by the Tribes; and

EXHIBIT 2

3.1.1.4 There are no actions or proceedings pending or, to the knowledge of the Tribes, threatened against, relating to or affecting the Tribes which could reasonably be expected to result in the issuance of an order retraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

3.1.2 With regard to PGE:

3.1.2.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a transaction will be performed by it;

3.1.2.2 It has all regulatory authorizations necessary for it to legally enter into and perform its obligations under this Agreement;

3.1.2.3 The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

3.1.2.4 This Agreement when entered into in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

3.1.2.5 There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

3.1.2.6 There are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE IV
Obligations and Deliveries

4.1 *Firm Energy*.

Upon the commencement of deliveries pursuant to Section 2.2 through the remaining term of this Agreement, Seller shall make available to Buyer, and Buyer shall purchase the Contract Quantity. At Buyer's request, Energy may be scheduled for delivery in Light Load Hours and Heavy Load Hours at any rate, *provided however*, the rate shall not be in conflict with the Seller's scheduling rights contained in Section 4.2 and 5.6 of the Ownership and Operation Agreement. Seller's obligation to deliver the Contract Quantity shall be absolute and the only excuse for failure of Seller to deliver the Contract Quantity shall be an Uncontrollable Force or Buyer's failure to perform.

4.2 *Transmission Losses*

Seller shall deliver 47 KWh to the Delivery Point for each MWh of Contract Quantity purchased under this Agreement. Such deliveries shall be full compensation for transmission losses assumed to be incurred by Buyer in transmitting the Contract Quantity from the Delivery Point to the Mid-C.

4.3 *Transmission Costs*.

Seller shall pay $3.93 for each MWh delivered to the Delivery Point in satisfaction of the Contract Quantity excluding transmission losses. This amount shall be full payment for the use of transmission facilities assumed to be used in delivering the Contract Quantity from the Delivery Point to the Mid-C. Buyer shall be responsible for any loss of Energy, any costs or charges imposed on or associated with the Contract Quantity, including inadvertent Energy flows, transmission losses and loss charges relating to the transmission of the Contract Quantity, associated with the transmission of Energy after its assumed delivery to the Mid-C.

4.4 *Notification of Scheduled Deliveries*.

Seller shall notify Buyer of scheduled deliveries in accordance with Section 4.2 of the Ownership and Operation Agreement. In the event Seller supplies the Contract Quantity from a source other than the Pelton Round Butte generation facilities or the Pelton Reregulating Dam, unless otherwise agreed, Seller shall be obligated to Schedule with the appropriate Transmission Providers or arrange for Scheduling service and to deliver to the Primary Transmission System, which is delivering Energy to the Delivery Point, and Buyer shall be obligated to Schedule with the appropriate Transmission Providers or arrange for a Scheduling service and to receive from the Primary Transmission System, which is receiving Energy at the Delivery Point, the Contract Quantity during each Day in accordance with the Transmission Provider's or Primary Transmission System Operator's notice requirements.

ARTICLE V
Title and Risk

5.1 *Title and Risk of Loss*.

Title to and risk of loss from Energy shall pass from Seller to Buyer at the Delivery Point.

5.2 *Seller Warranties*.

Seller warrants that it will transfer to Buyer good title to the Energy, free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point and that its sale is in compliance with all applicable laws and regulations. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

ARTICLE VI
Nonperformance and Remedies

6.1 *Damages for Failure to Deliver or Receive.*

Without limiting the rights of the non-breaching Party under the provisions of this Article 6 or otherwise, if either Party fails to deliver or receive or to provide, as the case may be, the quantities of Energy due under this Agreement, (thereby becoming the non-performing Party) the non-breaching Party shall, as promptly as practicable, but no longer than twenty-four (24) hours, give notice of such nonperformance to the non-performing Party. If the Parties agree and if commercially reasonable to do so in the context of its outstanding obligations, the non-breaching Party may allow the non-performing Party to remedy such nonperformance through an increase in subsequent hourly deliveries or receipts, as appropriate. If such a cure is not allowed by the non-breaching Party, or if allowed is not effected, the non-breaching Party shall be entitled to receive from the non-performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Force):

6.1.1 In the event that Seller fails to Schedule and deliver all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Buyer, Seller shall pay Buyer (on a date payment would otherwise be due from Buyer under this Agreement) an amount for each megawatt hour (MWh) of such deficiency equal to the positive difference, if any, of (i) the "Replacement Price", which is the price at which Buyer is, or would be, able to obtain comparable supplies of power at a commercially reasonable price (adjusted to reflect differences in transmission costs, if any) minus (ii) the Contract Price; *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.2 In the event that PGE fails to Schedule and to receive all or part of the Contract Quantity, where such failure was not agreed to or was not caused by Uncontrollable Force or by Seller, Buyer shall pay Seller (on a date payment would otherwise be due to Seller under this Agreement) an amount for each MWh of such deficiency equal to the positive difference; if any, of (i) the Contract Price minus (ii) the "Sales Price", which is the price at which, if any, Seller resells or otherwise disposes of all or part of the Contract Quantity not received by Buyer, *provided, however*, in no event shall any such amounts include any penalties, ratcheted demand or similar charge.

6.1.3 If payment pursuant to 6.1.1 and 6.1.2 is not made on a date payment would otherwise be due, the non-performing Party shall pay any amount due from it under this Article 6 within two (2) Business Days after the demand therefor is made.

ARTICLE VII
Default

7.1 *Default.*

A Default shall mean with respect to a Party (Defaulting Party):

EXHIBIT 2

7.1.1 The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (Non-Defaulting Party) and provided the payment is not the subject of a good faith dispute; or

7.1.2 Any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any material respect; or

7.1.3 Making a general assignment or arrangement for the benefit of creditors; or

7.1.4 The failure by the Defaulting Party to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 7) or its obligations to deliver or receive Energy, a remedy for which is provided in Article 6, and such failure is not excused by Uncontrollable Force or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or

7.1.5 The inability to pay its debts as they fall due; or

7.1.6 The Defaulting Party shall be subject to a Bankruptcy Proceeding.

7.2 *Remedies*.

In the event of a Default by the Tribes,

7.2.1 If a Default is limited to a failure of the Tribes to make payments, the Tribes' generation associated with their ownership share of the Pelton Dam and Round Butte Dam shall be sold during the period of Default for the benefit of PGE and the proceeds applied to the amounts owed by the Tribes.

7.2.2 Early Termination. Notwithstanding and in addition to any other provision of this Agreement, and except as provided below, if a Default occurs with respect to a Defaulting Party at any time during the term of this Agreement, the Non-Defaulting Party may, for so long as the Default is continuing:

7.2.2.1 Establish a date (which date shall be between one (1) and five (5) Business Days after the Non-Defaulting Party delivers notice) (Early Termination Date) on which the Agreement will terminate; and

7.2.2.2 Withhold any payments due in respect of this Agreement; *provided, however*, upon the occurrence of any Default listed in Sections 7.1.3, 7.1.5 or 7.1.6 as it may apply to any Party, this Agreement in respect thereof shall automatically terminate, without notice, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

7.2.3 Termination Payment. If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of the Agreement. The Gains, Losses and Costs shall be determined by comparing the value of the remaining term, Contract Quantity and Contract Prices remaining over the Contract Term had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for the Agreement. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Power futures contracts, quotations from leading dealers in Energy swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and difference in transmission. It is expressly agreed that a Party shall not be required to enter into replacement transactions in order to determine the Termination Payment, as defined below.

7.2.4 The Non-Defaulting Party shall aggregate such Gains, Losses and Costs with respect to the Agreement into a single net amount (Termination Payment) and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Agreement, the Non-Defaulting Party shall pay such excess to the Defaulting Party on or before the later of: (i) ten (10) days after the end of the month ending on or after the Early Termination Date or (ii) five (5) Business Days after receipt by the Defaulting Party of the Non-Defaulting Party's notice given above, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 13 and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

7.2.5 As used herein with respect to each Party: (i) "Costs" shall mean, with respect to a Party, brokerage fees, commissions and other similar Transaction Costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Agreement, and attorney fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner; and (iii) "Losses" shall mean, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to the terminated Agreement, determined in a commercially reasonable manner. At the time for payment of any amount due under this Section 7.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

7.3 *Other Remedies*.

7.3.1 Notwithstanding any other provision of this Agreement, if Seller or Buyer fails to pay to the other Party any amount when due, the aggrieved Party shall have the right to: (i) suspend performance under the Agreement until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate; provided, however, if the non-paying Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

7.4 *Costs for Exercise of Rights*.

After the occurrence of a Default, the Defaulting Party shall be responsible for all reasonable costs and expenses actually incurred by the Non-Defaulting Party in connection with the exercise of its rights under this Agreement including, without limitation, reasonable attorneys' fees (including appeal) and disbursements.

7.5 *Other Events*.

In the event PGE is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by PGE under any provision of this Agreement, such action shall not operate to excuse PGE from performance of any obligation nor shall such action give rise to any right of PGE to any refund or retroactive adjustment of the Contract Price provided in this Agreement. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the Effective Date and such regulation either: (i) renders this Agreement illegal or unenforceable in its entirety; or (ii) materially adversely affects the business of the affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, the affected Party, shall at such time have the right to declare an Early Termination Date in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an early Termination Date as stated above, the affected Party shall be liable for payment of the Termination Payment calculated by the non-affected Party as provided in Section 7.2. Notice that an Early Termination pursuant to Section 7.2 has occurred shall be given by the non-affected Party to the affected Party before the close of business on the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the affected Party against the non-affected Party.

7.6 *Set Off of Accounts*.

As an alternative to its rights under Sections 7 2 and 7 3 and without prejudice to its exercise of its rights under such Sections at any time, the Non-Defaulting Party may from time to time set off any or all amounts which the Defaulting Party owes to it (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due) provided that any amount not then due which is included in such setoff shall be discounted to the

prime rate (as disclosed by U.S. Bank from time to time) at the time of setoff (to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

ARTICLE VIII
Uncontrollable Force

8.1 *Performance Excused.*

Except with regard to a Party's obligation to make payments when due, neither Party shall be considered to be in Default in the performance of any obligations under this Agreement when a failure of performance shall be due to an Uncontrollable Force. In the event either Party hereto is prevented, wholly or in part, by an Uncontrollable Force from carrying out its obligations under this Agreement, it is agreed that upon such Party's giving notice and full details of such Uncontrollable Force as promptly as practicable, but not later than twenty-four (24) hours after the discovery of the effects of an Uncontrollable Force or the occurrence of the cause relied on, whichever is later, the Party giving such notice shall be relieved of its obligations insofar as they are affected by such Uncontrollable Force during the continuance of any inability so caused from its inception but for no longer period. The Party claiming Uncontrollable Force shall remedy the Uncontrollable Force with all reasonable dispatch.

8.2 *Exclusions.*

Neither Party shall be entitled to the benefit of this Article 8 under any of the following circumstances:

8.2.1 To the extent that the inability was caused by the negligence of the Party claiming relief;

8.2.2 To the extent that the inability was caused by the Party claiming relief having failed to remedy the condition acting commercially reasonably and with reasonable dispatch;

8.2.3 To the extent the event constituting Uncontrollable Force was intentionally initiated or intentionally acquiesced in by the Party claiming relief for the purpose of allowing that Party to claim Uncontrollable Force; or

8.2.4 If the inability was caused by a Party's lack of funds.

8.3 *Notice.*

The Party giving notice of Uncontrollable Force shall state in the notice required in Section 8.1, or if not practicable, in a second notice delivered by facsimile, telecopier or in writing not more than twenty-four (24) hours after the initial notice, the nature of the Uncontrollable Force, the date of its commencement and the anticipated duration if ascertainable and the actions being taken to mitigate the effects of the Uncontrollable Force. If requested by

the other Party, the Party claiming Uncontrollable Force shall provide a written report on the event of Uncontrollable Force including the cause, the actions taken to mitigate its effects and other information as may be reasonably requested by the other Party to evaluate the claim of Uncontrollable Force.

8.4 *Settlements.*

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of commercially reasonable efforts in restoring normal operating conditions shall not require the settlement of strikes or lockouts by acceding to the terms of the opposing Party when such is inadvisable in the discretion of the Party having the difficulty.

ARTICLE IX
Waiver of Sovereign Immunity

The Tribes acknowledge and agree that in entering into this Agreement they may incur obligations to PGE, and PGE's successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that PGE would not enter into this Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THEREFORE, THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER. THE TRIBES FURTHER EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS (A) TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS AGREEMENT, (B) TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS AGREEMENT AND ANY TRANSACTION HEREUNDER AND (C) TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS AGREEMENT AND ANY TRANSACTION HEREUNDER.

ARTICLE X
Limitations of Remedies, Liability and Damages

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S

LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON CONTRACT LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED.

THE PARTIES AGREE THAT FOR ANY CLAIM ARISING FROM A THEORY BASED ON TORT LAW OR OTHERWISE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO REPLACEMENT POWER COSTS), INCIDENTAL OR INDIRECT LOSSES OR DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM A PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESS CONDUCT.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

ARTICLE XI
Duty to Mitigate Damages

11.1 *Mitigation.*

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE XII
Taxes

12.1 *Taxes.*

The Contract Price shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes applicable to the

delivery of Energy arising prior to the Delivery Point. If Buyer is required to remit such tax, the amount shall be deducted from any sums due to Seller Seller shall indemnify, defend and hold harmless Buyer from any Claims for such taxes. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all taxes applicable to the delivery of Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such taxes Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize taxes.

ARTICLE XIII
Billing and Payment

13.1 *Billing and Payment.*

On or before the tenth (10th) day of each month following an Invoice Month, Seller shall send to Buyer an invoice setting forth the quantity of Energy which was Scheduled, the Contract Price or taxes, if applicable, Seller is obligated by Law to collect from Buyer, and the total amount due from Buyer.

13.2 *Method of Payment.*

PGE shall remit the amount due by wire or electronic fund transfer, pursuant to Seller's invoice instructions, by the later of the twentieth (20th) day of the calendar month in which the invoice was rendered or the tenth (10th) calendar day following the presentation of such invoice, provided that if such day is not a Business Day, payment is due on the next Business Day following that date. Wire or electronic fund transfers shall be by FEDWIRE or other electronic transfer service that assures immediately available funds to Seller on no later than the due date.

13.3 *Overdue Payments.*

Overdue payments shall bear interest at the Interest Rate from and including the due date to, but excluding the date of, payment on the unpaid portion.

ARTICLE XIV
Arbitration

14.1 *Scope of Disputes to be Arbitrated.*

Any dispute or need for an interpretation arising out of Article 6 and Article 7 of this Agreement pertaining to the calculation of a Termination Payment or a payment required thereunder shall be submitted to binding arbitration. DISPUTES OTHER THAN THOSE

SPECIFICALLY REFERENCED IN THE FOREGOING SENTENCE SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THIS ARTICLE 14.

14.2 *Arbitration Process.*

Arbitration pursuant to this Article 14 shall be by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within fourteen (14) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the Portland Arbitration Service (the "PSA"). Such arbitration shall be held in Portland, Oregon. The rules of the PSA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement; (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment; (iii) the arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties; (iv) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives; and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to the arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

ARTICLE XV
Miscellaneous

15.1 *Assignment of Agreement.*

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (which consent shall not unreasonably be withheld); *provided, however*, either Party may, without consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by all terms and conditions hereof.

15.2 *Limitations on Recourse.*

The Tribes hereby pledge all their Pelton Round Butte Project Rights ("Project Rights"), as they are defined in the Ownership and Operation Agreement to satisfy any and all obligations they may have to PGE under this Agreement and otherwise with respect to the Pelton Round Butte Project. PGE agrees to seek satisfaction of any Claims it may have against the Tribes under this Agreement initially from the Tribes' Project Rights and to the extent the Tribes' Project Rights are insufficient to satisfy PGE's outstanding claims, PGE shall next seek

EXHIBIT 2

satisfaction from the Tribes' rights in the Pelton Reregulating Dam generation. In the event a Claim has not been satisfied as of the expiration of the term of this Agreement, PGE's rights pursuant to this Section 15.2 shall continue notwithstanding the termination of this Agreement until such time as all liabilities, obligations and rights related to or associated with the Agreement prior to the date of termination are satisfied. The provisions of this section 15.2 do not limit the rights of either the Tribes or PGE to seek (a) specific performance of this Agreement, (b) other injunctive relief or (c) any other form of non-monetary relief.

15.3 *Audit Right.*

Each Party shall have the right, at its sole cost and expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement during the immediately preceding twenty-four (24) months. For all transactions pursuant to this Agreement, the Parties shall retain all relevant records for twenty-four (24) months following each Delivery Period.

15.4 *Winding Up Arrangements.*

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect following the expiration or termination of this Agreement to the extent necessary to give full force and effect to the rights and obligations undertaken by the Parties herein.

15.5 *Notices.*

All notices, requests, statements or payments shall be made as specified in Exhibit A. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

15.6 *Governing Law.*

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW, EXCEPT TO THE EXTENT SUCH OREGON LAWS MAY BE PREEMPTED BY THE LAWS OF THE UNITED STATES OF AMERICA.

15.7 *Waivers.*

No waiver by either Party, either express or implied, of any one or more Defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future Default or Defaults, whether of a like or a different character. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition herein, notwithstanding any course of dealing or custom of the trade.

15.8 *Severability.*

If any provision of this Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other Party or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by Law.

15.9 *Section Headings.*

Section headings are for the convenience of reference only and shall not affect the interpretation of this Agreement.

15.10 *No Rights to Third Parties.*

The provisions of this Agreement shall not impart rights enforceable by any person or organization not a Party or bound as a Party except for a permitted successor assignee of a Party bound by this Agreement.

15.11 *Parties Acting for Own Account.*

The Parties acknowledge that each Party is acting for its own account, and that each has made its own independent decision to enter into this Agreement and to whether this Agreement are appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each Party warrants that it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of this Agreement. Neither Party is relying on any communications (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement. The Parties acknowledge that neither is acting as a fiduciary, as an advisor or in an agency capacity with respect to the other Party.

15.12 *Entire Agreement; Amendment.*

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior agreements with respect hereto. This Agreement may be modified only by a written agreement executed by both Parties hereto.

EXHIBIT 2

15.13 *Conditions of Performance*.

Performance by any Party under this Agreement is conditioned on performance then due by the other Party hereto under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

PORTLAND GENERAL ELECTRIC COMPANY

By: _____
Name: RONALD W JOHNSON
Title: VICE PRESIDENT

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: _____
Name: _____
Title: _____

Charles V. Jackson
Secretary-Treasurer

EXHIBIT 2

EXHIBIT A
to the
Wholesale Power Purchase and Sale Agreement
between
The Confederated Tribes of the Warm Springs Reservation
and
Portland General Electric Company

NOTICES AND PAYMENT

Portland General Electric Company:

NOTICES & CORRESPONDENCE
Portland General Electric Company
Attn: Power Operations
121 SW Salmon Street
Portland, OR 97204
Fax No.: (503) 464-2605
Phone No.: (503) 464-7358

INVOICES:
Portland General Electric Company
Attn: Accounts Payable
121 SW Salmon Street
Portland, OR 97204

PAYMENTS (US Dollars)
U.S. Bank
for Portland General Electric
ABA Routing No.: 123000220
Account No.: 153600063512

Confirmation: Cash Management
Phone No.: 503-464-7085 or 503-464-7760

Seller:

NOTICES & CORRESPONDENCE

_____
Attn: _____
_____
_____
Fax No.: _____
Phone No.: _____

INVOICES

_____
Attn: _____
_____
_____
Fax No: _____
Phone No.: _____

PAYMENTS

_____
ABA No.: _____
Account No.: _____
Confirmation: _____
Phone No.: _____

or to such other address as Seller or PGE shall from time to time designate by letter properly addressed.

DOCUMENT ESCROW AGREEMENT

This DOCUMENT ESCROW AGREEMENT ("Escrow Agreement"), is dated as of January 1, 2002 and is by and among The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body the Tribal Council (the "Tribes"), Portland General Electric Company, an Oregon corporation ("PGE") and Jefferson County Title ("Escrow Agent"). (The Tribes and PGE are each referred to individually herein as a "Party" and collectively as the "Parties.")

Definitions

Unless otherwise defined in this Escrow Agreement, terms defined in the Long-Term Global Settlement and Compensation Agreement dated April 12, 2000 ("Settlement and Compensation Agreement" and the Asset Purchase Agreement between the Parties dated as of January 1, 2002 (the "Asset Purchase Agreement") shall have the same meanings when used herein as in such agreements.

Introductory Statement

The Parties have executed (and/or have received from third parties) the documents listed in Schedule A hereto (the "Escrow Documents") pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement. The Parties desire that delivery of the Escrow Documents, and the effectiveness thereof, be conditioned and contingent entirely upon satisfaction of the Escrow Conditions (as defined below) and wish to place the Escrow Documents in escrow with Escrow Agent pending satisfaction or failure of the Escrow Conditions. However, the Parties desire that such escrow shall not continue after March 31 , 2002 (the "Outside Date"); and the Parties intend that, if the Escrow Conditions are not satisfied on or before 5:00 p.m. Portland, Oregon time on the Outside Date, the Escrow Documents shall be void and of no further force and effect whatsoever.

EXHIBIT 2

NOW, THEREFORE, in consideration of Ten Dollars ($10) and other good and valuable consideration, and intending to be legally bound hereby, the Parties and Escrow Agent agree as follows:

1. Escrow Deposit. The Parties herewith deliver the Escrow Documents to Escrow Agent. Escrow Agent agrees to hold the Escrow Documents in escrow upon the terms, and subject to the conditions, of this Escrow Agreement.

2. Escrow Conditions. The "Escrow Conditions" are defined and set forth on Schedule B hereto.

3. Instructions to Escrow Agent.

(a) If the Escrow Conditions are satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, Escrow Agent shall distribute the Escrow Documents in accordance with the distribution instructions in Schedule A hereto. The Parties agree that distribution of the Escrow Documents by Escrow Agent in accordance with the instructions in Schedule A shall be deemed to complete delivery of the Escrow Documents under the Settlement and Compensation Agreement and the Asset Purchase Agreement. Upon such distribution of the Escrow Documents by the Escrow Agent this Escrow Agreement shall terminate.

(b) If the Escrow Conditions are not satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, the Escrow Documents shall be deemed void and of no force and effect whatsoever, provided that such deemed voiding of the Escrow Documents shall have no effect upon the remaining rights, obligations and remedies of the Parties as provided in the Settlement and Compensation Agreement and the Asset Purchase Agreement, each of which has been fully executed and delivered by the Parties contemporaneously herewith and is not otherwise subject to this escrow. Escrow Agent shall hold the Escrow Documents for thirty (30) days after the Outside Date and, promptly thereafter, unless Escrow Agent shall have previously received a written agreement signed by both Parties directing otherwise (which neither Party shall have any obligation to sign), Escrow Agent shall destroy all the Escrow Documents to signify that the same are void and of no force and effect whatsoever whereupon this Escrow Agreement shall terminate.

4. Limitations on Escrow Agent's Responsibilities. Escrow Agent shall have no duties or responsibilities except those set forth herein, which the Parties agree are ministerial in nature. Escrow Agent shall have no duty to know or determine the performance or non-performance of any provision of any agreement between the Parties, including with respect to the Settlement and Compensation Agreement and the Asset Purchase Agreement. Except for Escrow Agent's own willful default or gross negligence, Escrow Agent shall have no liability for the performance of any duties imposed upon Escrow Agent under this Escrow Agreement. Escrow Agent may rely and/or act upon any instrument or document which Escrow Agent believes to be genuine and to have been executed and/or delivered by the proper person. Escrow Agent may assume that any person

purporting to give any notice or instructions in accordance with the provisions of this Escrow Agreement has been duly authorized to do so. Escrow Agent shall not be bound by any amendment, modification, cancellation or rescission of this Escrow Agreement unless in writing, signed by the Parties and delivered to Escrow Agent. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow Agreement shall be binding upon Escrow Agent unless written notice thereof shall be served upon Escrow Agent.

5. Uncertainty/Disputes. If Escrow Agent is uncertain for any reason whatsoever as to its duties or rights under this Escrow Agreement, or if Escrow Agent receives instructions from any person which (in Escrow Agent's sole judgment) conflict with this Escrow Agreement, notwithstanding any provision hereof to the contrary Escrow Agent may act as follows:

(a) Escrow Agent may continue to hold the Escrow Documents until Escrow Agent receives either (i) a written agreement of both Parties with respect to the disposition of the Escrow Documents or (ii) a final non-appealable order of a court of competent jurisdiction entered in a proceeding in which both Parties are named that directs the disposition of the Escrow Documents, in which event Escrow Agent shall distribute the Escrow Documents in accordance with such agreement or court order, as applicable; and/or

(b) Escrow Agent may take such other action as Escrow Agent deems necessary or desirable, in its discretion, to discharge and terminate its duties under this Escrow Agreement, including delivery of the Escrow Documents into a court as provided in Section 11 hereof and/or bringing in such court of an action of interpleader or any other proceedings in such court which Escrow Agent deems appropriate.

In any event, the Parties shall be jointly and severally liable for, and shall pay promptly, reasonable attorney's fees and costs incurred by Escrow Agent for any litigation in which Escrow Agent is named as, or becomes, a party, or which is brought by Escrow Agent, under or with respect to this Escrow Agreement.

6. Indemnity. The Parties (jointly and severally) shall reimburse Escrow Agent (and hereby agree to indemnify and hold Escrow Agent harmless against) loss, liability, cost or expense in connection with this Escrow Agreement and/or performance of Escrow Agent's duties hereunder, including defending against any claim or liability arising out of or relating to this Escrow Agreement. As between the Parties, all fees, costs and indemnities of Escrow Agent shall be shared equally by each of them.

7. Release. The Parties hereby release Escrow Agent from any act done or omitted to be done in good faith in the performance of its duties under this Escrow Agreement excepting gross negligence or willful misconduct. However, paragraphs 5 and 6 above shall not require reimbursement to, or indemnification of, Escrow Agent in any legal action in which there

EXHIBIT 2

is a determination, final beyond appeal, of gross negligence or willful misconduct on the part of Escrow Agent.

8. Notices. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

If to the Parties:

To the Tribes:

Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

with a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To PGE:

Portland General Electric Company
Attention: Vice President, Power Supply
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

If to Escrow Agent:

Jefferson County Title Company
534 SW 4th Street
Madras, OR 97741
Attention: Debbie Rauscher

Notice given pursuant to this Section 8 shall be effective upon physical receipt by both of the two non-notifying parties.

9. Waiver of Immunity. The Tribes acknowledge and agree that in entering into this Escrow Agreement, they may incur obligations to the Escrow Agent, PGE, and each of their respective successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that the Escrow Agent and PGE would not enter into this Escrow Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to the Escrow Agent or PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS ESCROW AGREEMENT. THE TRIBES HEREBY EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS ESCROW AGREEMENT, TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS ESCROW AGREEMENT, AND TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS ESCROW AGREEMENT.

10. Choice of Laws. This Escrow Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

11. Jurisdiction and Venue. The Parties and the Escrow Agent agree that any disputes concerning, relating to or arising out of this Escrow Agreement present a federal question. With respect to any proceedings, suit or action relating to this Escrow Agreement or the subject matter hereof, (collectively referred to as "Proceedings") each Party and the Escrow Agent irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each Party hereto and the Escrow Agent irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim

EXHIBIT 2

that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 12 below, each Party hereto and the Escrow Agent irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Neither of PGE's nor the Escrow Agent's entry into this Escrow Agreement shall be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's or the Escrow Agent's activities.

12. Determination by FERC or Arbitration if No U.S. District Court or Oregon State Court Jurisdiction. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall first seek to have such Proceeding determined by FERC. The Parties and the Escrow Agent further agree that in the event any Proceeding is so brought to FERC and FERC declines to determine the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties and the Escrow Agent agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award exemplary, punitive, or speculative damages or damages based on or measured by tort or other non-contractual principles. The Parties and the Escrow Agent further agree that they will faithfully observe this Escrow Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Escrow Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made

EXHIBIT 2

from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

13. Severability. If any provision of this Escrow Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party or Escrow Agent under this Escrow Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Escrow Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Escrow Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

14. Resignation. Escrow Agent may resign by giving notice in writing to the Parties as provided herein of its intent to so resign. Resignation shall become effective upon the first to occur of (a) the execution by a substitute escrow agent of a written acceptance of responsibilities hereunder and (b) thirty (30) days after the effective date of Escrow Agent=s notice of intent to resign.

15. No Effect on Other Agreements. This Escrow Agreement has been delivered pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement for the purpose of fulfilling the rights and obligations of the Parties as set forth therein. This Escrow Agreement is not intended to and shall not modify or amend the respective rights and obligations of the Parties under such agreements or any other agreement between the Parties, except and to the extent of obligations to be performed hereunder. Closing of the escrow, or termination of this Escrow Agreement, shall not terminate, waive, release or otherwise relinquish in any way any right or obligation of either Party or any Person under any agreement to which such Party or Person or any other Person may be bound.

16. Fees. The Parties shall share equally the cost of the fees paid by the Title Company to carry out its responsibilities under this Escrow Agreement.

17. Miscellaneous. This Escrow Agreement embodies the entire agreement and understanding among the parties and supersedes all prior agreements and understandings relating to the subject matter thereof. This Escrow Agreement may not be modified or amended or any term or provisions hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. All the terms of this Escrow Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties and their

respective successors and assigns. This Escrow Agreement may be executed in (a) counterparts, a complete set of which shall constitute an original and/or (b) duplicates, each of which shall constitute an original. Copies of this Escrow Agreement showing the signatures of the Parties and Escrow Agent may be used for all purposes as originals (whether produced by photographic, digital, computer, or other means of reproduction).

18. No Consequential, Incidental or Punitive Damages.

THE PARTIES AND THE ESCROW AGENT AGREE THAT IN NO EVENT SHALL ANY OF THEM BE LIABLE TO ANY OTHER(S) OF THEM HEREUNDER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL (INCLUDING REPLACEMENT POWER COSTS), PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY BREACH OR FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OF EITHER PARTY OR THE ESCROW AGENT.

19. Termination of Settlement and Compensation Agreement Prior to Satisfaction of Escrow Conditions. In the event the Settlement and Compensation Agreement is terminated prior to satisfaction of all the Escrow Conditions, then this Escrow Agreement shall terminate simultaneously with the termination of the Settlement and Compensation Agreement.

SIGNATURE PAGE FOLLOWS

EXHIBIT 2

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the day and year first above written.

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: _____
Name: Olney Patt, Jr.
Title: Chairman

PORTLAND GENERAL ELECTRIC COMPANY

By: _____
Name: Ronald W. Johnson
Title: Vice President, Power Supply

Jefferson County Title Company

By: Deborah Rauscher
Name: Debbie Rauscher
Title: Vice President / Assistant County Manager

EXHIBIT 2

SCHEDULE A

Escrow Documents and Instructions for Delivery

1. Bill of Sale dated as of January 1, 2002. Original to the Tribes and copy to PGE.

2. The following deeds of conveyance:

Bargain and Sale Deed dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.

3. The following instruments of assignment or conveyance:

Partial Assignment of Easements and Assumption Agreement dated as of January 1, 2002.

Originals to the Tribes and one copy of each to PGE.

4. Ownership and Operation Agreement for the Pelton and Round Butte Dams and Generating Facilities by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.

5. Mutual General Release by The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002. One original to each of the Tribes and PGE.

6. Asset Purchase Agreement Between The Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric Company, dated as of January 1, 2002 at 12:15 a.m. One original to each of the Tribes and PGE.

EXHIBIT 2

SCHEDULE B

Escrow Conditions

The Escrow Conditions under the foregoing Escrow Agreement consist of the following:

1. The occurrence of 0015 hours Pacific time on January 1, 2002.

EXHIBIT 2

DOCUMENT ESCROW AGREEMENT

This DOCUMENT ESCROW AGREEMENT ("Escrow Agreement"), is dated as of January 1, 2002 and is by and among The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe having a Constitution and Bylaws and Corporate Charter adopted pursuant to the terms of the Indian Reorganization Act, including its governing body the Tribal Council (the "Tribes"), Portland General Electric Company, an Oregon corporation ("PGE") and Jefferson County Title ("Escrow Agent"). (The Tribes and PGE are each referred to individually herein as a "Party" and collectively as the "Parties.")

Definitions

Unless otherwise defined in this Escrow Agreement, terms defined in the Long-Term Global Settlement and Compensation Agreement dated April 12, 2000 ("Settlement and Compensation Agreement" and the Asset Purchase Agreement between the Parties dated as of January 1, 2002 (the "Asset Purchase Agreement") shall have the same meanings when used herein as in such agreements.

Introductory Statement

The Parties have executed (and/or have received from third parties) the documents listed in Schedule A hereto (the "Escrow Documents") pursuant to the Settlement and Compensation Agreement and the Asset Purchase Agreement. The Parties desire that delivery of the Escrow Documents, and the effectiveness thereof, be conditioned and contingent entirely upon satisfaction of the Escrow Conditions (as defined below) and wish to place the Escrow Documents in escrow with Escrow Agent pending satisfaction or failure of the Escrow Conditions. However, the Parties desire that such escrow shall not continue after March 31 , 2002 (the "Outside Date"); and the Parties intend that, if the Escrow Conditions are not satisfied on or before 5:00 p.m. Portland, Oregon time on the Outside Date, the Escrow Documents shall be void and of no further force and effect whatsoever.

EXHIBIT 2

NOW, THEREFORE, in consideration of Ten Dollars ($10) and other good and valuable consideration, and intending to be legally bound hereby, the Parties and Escrow Agent agree as follows:

1. Escrow Deposit. The Parties herewith deliver the Escrow Documents to Escrow Agent. Escrow Agent agrees to hold the Escrow Documents in escrow upon the terms, and subject to the conditions, of this Escrow Agreement.

2. Escrow Conditions. The "Escrow Conditions" are defined and set forth on Schedule B hereto.

3. Instructions to Escrow Agent.

(a) If the Escrow Conditions are satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, Escrow Agent shall distribute the Escrow Documents in accordance with the distribution instructions in Schedule A hereto. The Parties agree that distribution of the Escrow Documents by Escrow Agent in accordance with the instructions in Schedule A shall be deemed to complete delivery of the Escrow Documents under the Settlement and Compensation Agreement and the Asset Purchase Agreement. Upon such distribution of the Escrow Documents by the Escrow Agent this Escrow Agreement shall terminate.

(b) If the Escrow Conditions are not satisfied before 5:00 p.m. Portland, Oregon time on the Outside Date, time being of the essence, the Escrow Documents shall be deemed void and of no force and effect whatsoever, provided that such deemed voiding of the Escrow Documents shall have no effect upon the remaining rights, obligations and remedies of the Parties as provided in the Settlement and Compensation Agreement and the Asset Purchase Agreement, each of which has been fully executed and delivered by the Parties contemporaneously herewith and is not otherwise subject to this escrow. Escrow Agent shall hold the Escrow Documents for thirty (30) days after the Outside Date and, promptly thereafter, unless Escrow Agent shall have previously received a written agreement signed by both Parties directing otherwise (which neither Party shall have any obligation to sign), Escrow Agent shall destroy all the Escrow Documents to signify that the same are void and of no force and effect whatsoever whereupon this Escrow Agreement shall terminate.

4. Limitations on Escrow Agent's Responsibilities. Escrow Agent shall have no duties or responsibilities except those set forth herein, which the Parties agree are ministerial in nature. Escrow Agent shall have no duty to know or determine the performance or non-performance of any provision of any agreement between the Parties, including with respect to the Settlement and Compensation Agreement and the Asset Purchase Agreement. Except for Escrow Agent's own willful default or gross negligence, Escrow Agent shall have no liability for the performance of any duties imposed upon Escrow Agent under this Escrow Agreement. Escrow Agent may rely and/or act upon any instrument or document which Escrow Agent believes to be genuine and to have been executed and/or delivered by the proper person. Escrow Agent may assume that any person

purporting to give any notice or instructions in accordance with the provisions of this Escrow Agreement has been duly authorized to do so. Escrow Agent shall not be bound by any amendment, modification, cancellation or rescission of this Escrow Agreement unless in writing, signed by the Parties and delivered to Escrow Agent. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow Agreement shall be binding upon Escrow Agent unless written notice thereof shall be served upon Escrow Agent.

5. Uncertainty/Disputes. If Escrow Agent is uncertain for any reason whatsoever as to its duties or rights under this Escrow Agreement, or if Escrow Agent receives instructions from any person which (in Escrow Agent's sole judgment) conflict with this Escrow Agreement, notwithstanding any provision hereof to the contrary Escrow Agent may act as follows:

(a) Escrow Agent may continue to hold the Escrow Documents until Escrow Agent receives either (i) a written agreement of both Parties with respect to the disposition of the Escrow Documents or (ii) a final non-appealable order of a court of competent jurisdiction entered in a proceeding in which both Parties are named that directs the disposition of the Escrow Documents, in which event Escrow Agent shall distribute the Escrow Documents in accordance with such agreement or court order, as applicable; and/or

(b) Escrow Agent may take such other action as Escrow Agent deems necessary or desirable, in its discretion, to discharge and terminate its duties under this Escrow Agreement, including delivery of the Escrow Documents into a court as provided in Section 11 hereof and/or bringing in such court of an action of interpleader or any other proceedings in such court which Escrow Agent deems appropriate.

In any event, the Parties shall be jointly and severally liable for, and shall pay promptly, reasonable attorney's fees and costs incurred by Escrow Agent for any litigation in which Escrow Agent is named as, or becomes, a party, or which is brought by Escrow Agent, under or with respect to this Escrow Agreement.

6. Indemnity. The Parties (jointly and severally) shall reimburse Escrow Agent (and hereby agree to indemnify and hold Escrow Agent harmless against) loss, liability, cost or expense in connection with this Escrow Agreement and/or performance of Escrow Agent's duties hereunder, including defending against any claim or liability arising out of or relating to this Escrow Agreement. As between the Parties, all fees, costs and indemnities of Escrow Agent shall be shared equally by each of them.

7. Release. The Parties hereby release Escrow Agent from any act done or omitted to be done in good faith in the performance of its duties under this Escrow Agreement excepting gross negligence or willful misconduct. However, paragraphs 5 and 6 above shall not require reimbursement to, or indemnification of, Escrow Agent in any legal action in which there

EXHIBIT 2

is a determination, final beyond appeal, of gross negligence or willful misconduct on the part of Escrow Agent.

8. Notices. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

If to the Parties:

To the Tribes:

Confederated Tribes of the Warm Springs Reservation
Chairman, Tribal Council
P. O. Box C
Warm Springs, OR 97761

with a copy to:

Mr. Dennis C. Karnopp, Esq.
Karnopp, Petersen, Noteboom, Hansen, Arnett, & Sayeg LLP
1201 NW Wall St.
Suite 300
Bend, OR 97701

To PGE:

Portland General Electric Company
Attention: Vice President, Power Supply
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

with a copy to:

Portland General Electric Company
Attention: General Counsel
1 World Trade Center-17
121 SW Salmon Street
Portland, OR 97204

EXHIBIT 2

If to Escrow Agent:

Jefferson County Title Company
534 SW 4th Street
Madras, OR 97741
Attention: Debbie Rauscher

Notice given pursuant to this Section 8 shall be effective upon physical receipt by both of the two non-notifying parties.

9. Waiver of Immunity. The Tribes acknowledge and agree that in entering into this Escrow Agreement, they may incur obligations to the Escrow Agent, PGE, and each of their respective successors and assigns, and may become liable to these parties for injunctive or declaratory relief or for damages. The Tribes further acknowledge that the Escrow Agent and PGE would not enter into this Escrow Agreement with the Tribes if the Tribes could defeat or hinder enforcement against them of the rights granted to the Escrow Agent or PGE by claiming sovereign immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. THE TRIBES HEREBY CONSENT TO SUIT, ARBITRATION, ENFORCEMENT AND COLLECTION OF JUDGMENTS, AWARDS, INJUNCTIONS AND DECLARATORY JUDGMENTS AS TO ANY OBLIGATIONS ARISING OUT OF THIS ESCROW AGREEMENT. THE TRIBES HEREBY EXPRESSLY WAIVE, WITHOUT LIMITATION, ANY CLAIM OR ASSERTION OF SOVEREIGN IMMUNITY FROM SUIT IN ACTIONS TO INTERPRET OR ENFORCE ANY PROVISION OF OR RIGHTS GRANTED IN THIS ESCROW AGREEMENT, TO SEEK JUDGMENT FOR MONETARY OBLIGATIONS ARISING UNDER THIS ESCROW AGREEMENT, AND TO ENFORCE AND COLLECT ANY JUDGMENT IN ANY SUIT OR ARBITRATION CONCERNING OR ARISING OUT OF THIS ESCROW AGREEMENT.

10. Choice of Laws. This Escrow Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Oregon (without reference to any principles of conflicts of laws), except to the extent such Oregon laws may be preempted by the laws of the United States of America.

11. Jurisdiction and Venue. The Parties and the Escrow Agent agree that any disputes concerning, relating to or arising out of this Escrow Agreement present a federal question. With respect to any proceedings, suit or action relating to this Escrow Agreement or the subject matter hereof, (collectively referred to as "Proceedings") each Party and the Escrow Agent irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon located in Portland, Oregon. Each Party hereto and the Escrow Agent irrevocably waives any objection which it may have at any time to the laying of venue of any Proceeding brought in the United States District Court for the District of Oregon located in Portland, Oregon, waives any claim

that such Proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such Proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal. In the event such court determines that the subject matter of the Proceeding does not fall within the statutory jurisdiction of U.S. District Courts or for any reason declines to exercise jurisdiction over the Proceeding, then the dispute shall be resolved by judicial proceedings in a court of the State of Oregon which has jurisdiction and venue. Except for the limited purpose specified in Section 12 below, each Party hereto and the Escrow Agent irrevocably waives any right it might otherwise have to seek to have any Proceeding determined in any tribal court and agrees that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Neither of PGE's nor the Escrow Agent's entry into this Escrow Agreement shall be deemed to give rise to a consensual relationship that would establish the Tribes' jurisdiction over PGE's or the Escrow Agent's activities.

12. Determination by FERC or Arbitration if No U.S. District Court or Oregon State Court Jurisdiction. In the event both the United States District Court for the District of Oregon and the courts of the State of Oregon determine that the subject matter of the Proceeding does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall first seek to have such Proceeding determined by FERC. The Parties and the Escrow Agent further agree that in the event any Proceeding is so brought to FERC and FERC declines to determine the Proceeding, then the Parties and the Escrow Agent, as the case may be, shall submit the Proceeding to arbitration in Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association. The Parties and the Escrow Agent agree that any such Proceeding shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award exemplary, punitive, or speculative damages or damages based on or measured by tort or other non-contractual principles. The Parties and the Escrow Agent further agree that they will faithfully observe this Escrow Agreement and the rules, that they will abide by and perform any award rendered by the arbitrators and that a judgment of a court having jurisdiction may be entered upon the award; provided, however, the award may be challenged and modified in whole or part or denied enforcement in whole or part, but only on the basis that the award exceeded the scope of the arbitrators' authority under this Escrow Agreement or the Federal Arbitration Act. In the event neither a federal court nor an Oregon court has, or will accept, jurisdiction to enter an order upon the award, then the Tribes and PGE agree that a tribal court judge pro tempore of the Warm Springs Tribal Court shall have jurisdiction exclusively for the purpose of entering an order upon the award. The tribal court judge pro tempore shall be a retired federal court judge who shall be selected from a publicly available list of retired federal court judges, by mutual agreement of the Tribes and PGE, with each of the Tribes and PGE proposing three names from such list to the other and the Tribes and PGE seeking to reach agreement on a judge from such proposed names within fifteen days after the exchange of their respective lists of three names. If the Tribes and PGE are unable to agree on a judge from such list, the selection shall be made from such publicly available list by the CPR Institute for Dispute Resolution, 366 Madison Ave., New York, NY ("CPR"). If CPR is unable or unwilling to select such judge, then the selection shall be made

EXHIBIT 2

from such publicly available lists, taking into consideration the names provided on the lists proposed by the Tribes and PGE, by another alternative dispute resolution service agreeable to the Tribes and PGE. Judges proposed or selected shall provide to each of the Tribes and PGE statements of any relationships with either Party. Any judge selected shall be impartial and shall not have disqualifying relationships with any Party.

13. Severability. If any provision of this Escrow Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party or Escrow Agent under this Escrow Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Escrow Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Escrow Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

14. Resignation. Escrow Agent may resign by giving notice in writing to the Parties as provided herein of its intent to so resign. Resignation shall become effective upon the first to occur of (a) the execution by a substitute escrow agent of a written acceptance of responsibilities hereunder and (b) thirty (30) days after the effective date of Escrow Agent=s notice of intent to resign.

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By: Olney Patt, Jr.
Name: Olney Patt, Jr.
Title: Chairman

PORTLAND GENERAL ELECTRIC COMPANY

By: Ronald W. Johnson dpt
Name: Ronald W. Johnson
Title: Vice President, Power Supply

Jefferson County Title Company

By: Deborah Rauscher
Name: Debbie Rauscher
Title: Vice President / Assistant County Manager

EXHIBIT 2

SCHEDULE A

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EXHIBIT 2

EXHIBIT 3

Madras Solar-PGE QF-LGIA, dated April 8, 2021

QUALIFYING FACILITY LARGE GENERATOR INTERCONNECTION AGREEMENT (QF-LGIA)

(Applicable to Qualifying Facilities in Oregon that exceed 20 MW)

TABLE OF CONTENTS

Recitals 1
Article 1. Definitions 2
Article 2. Effective Date, Term, and Termination 10
2.1 Effective Date 10
2.2 Term of Agreement 10
2.3 Termination Procedures 11
2.3.1 Written Notice 11
2.3.2 Default 11
2.3.4 Change in Qualifying Facilities Status 11
2.4 Termination Costs 11
2.5 Disconnection 12
2.6 Survival 13
Article 3. Regulatory Filings 13
3.1 Filing 13
3.2 Recordkeeping and Reporting Requirements 13
Article 4. Scope of Service 14
4.1 Network Resource Interconnection Service 14
4.1.1 The Product 14
4.1.2 Transmission Delivery Service Implications 14
4.2 Provision of Service 15
4.3 Performance Standards 15
4.4 No Transmission Delivery Service 15
4.5 Interconnection Customer Provided Services 15
Article 5. Interconnection Facilities Engineering, Procurement, and Construction 16
5.1 Options 16
5.1.1 Standard Option 16
5.1.2 Alternate Option 16
5.1.3 Option to Build 17
5.1.4 Negotiated Option 17
5.2 General Conditions Applicable to Option to Build 17

5.3 Liquidated Damages. 19
5.4 Power System Stabilizers 19
5.5 Equipment Procurement 20
5.6 Construction Commencement 20
5.7 Work Progress 21
5.8 Information Exchange 21
5.9 Limited Operation 21
5.10 Interconnection Customer's Interconnection Facilities ("ICIF") 21
5.10.1 Interconnection Customer's Interconnection Facility Specifications 21
5.10.2 Transmission Provider's Review 22
5.10.3 ICIF Construction 22
5.11 Transmission Provider's Interconnection Facilities Construction 22
5.12 Access Rights 23
5.13 Lands of Other Property Owners 23
5.14 Permits 23
5.15 Early Construction of Base Case Facilities 23
5.16 Suspension 24
5.17 Taxes 24
5.17.1 Interconnection Customer Payments Not Taxable 24
5.17.2 Representations and Covenants 25
5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Provider 25
5.17.4 Tax Gross-Up Amount 26
5.17.5 Private Letter Ruling or Change or Clarification of Law 27
5.17.6 Subsequent Taxable Events 27
5.17.7 Contests 27
5.17.8 Refund 28
5.17.9 Taxes Other Than Income Taxes 29
5.17.10 Transmission Owners Who Are Not Transmission Providers 30
5.18 Tax Status 30
5.19 Modification 30
5.19.1 General 30
5.19.2 Standards 30
5.19.3 Modification Costs 31
Article 6. Testing and Inspection 31
6.1 Pre-Commercial Operation Date Testing and Modifications 31

6.2 Post-Commercial Operation Date Testing and Modifications 31
6.3 Right to Observe Testing 31
6.4 Right to Inspect 32
Article 7. Metering 32
7.1 General 32
7.2 Station Power Metering 32
7.3 Check Meters 33
7.4 Standards 33
7.5 Testing of Metering Equipment 33
7.6 Metering Data 33
Article 8. Communications 34
8.1 Interconnection Customer Obligations 34
8.2 Remote Terminal Unit 34
8.3 No Annexation 34
Article 9. Operations 35
9.1 General 35
9.2 Transmission Provider Obligations 35
9.3 Interconnection Customer Obligations 35
9.4 Start-Up and Synchronization 35
9.5 Reactive Power 35
9.5.1 Power Factor Design Criteria 35
9.5.2 Voltage Schedules 36
9.5.3 Payment for Reactive Power 36
9.6 Outages and Interruptions 37
9.6.1 Outages 37
9.6.2 Interruption of Service 38
9.6.3 Under-Frequency and Over Frequency Conditions 39
9.6.4 System Protection and Other Control Requirements 39
9.6.5 Requirements for Protection 40
9.6.6 Power Quality 40
9.7 Switching and Tagging Rule 41
9.8 Use of Interconnection Facilities by Third Parties 41
9.8.1 Purpose of Interconnection Facilities 41
9.8.2 Third Party Users 41
9.9 Disturbance Analysis Data Exchange 41
Article 10. Maintenance 42

10.1 Transmission Provider Obligations 42
10.2 Interconnection Customer Obligations 42
10.3 Coordination 42
10.4 Secondary Systems 42
10.5 Operating and Maintenance Expenses 42
Article 11. Performance Obligation 43
11.1 Interconnection Customer Interconnection Facilities 43
11.2 Transmission Provider's Interconnection Facilities 43
11.3 Network Upgrades and Distribution Upgrades 43
11.4 Special Provisions for Affected Systems 43
11.5 Provision of Security 43
11.6 Interconnection Customer Compensation 44
11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition 44
Article 12. Invoice 44
12.1 General 44
12.2 Final Invoice 45
12.3 Payment 45
12.4 Disputes 45
Article 13. Emergencies 45
13.1 Obligations 45
13.2 Notice 46
13.3 Immediate Action 46
13.4 Transmission Provider Authority 46
13.4.1 General 46
13.4.2 Reduction and Disconnection 47
13.5 Interconnection Customer Authority 47
13.6 Limited Liability 47
Article 14. Regulatory Requirements and Governing Law 48
14.1 Regulatory Requirements 48
14.2 Governing Law 48
Article 15. Notices 48
15.1 General 48
15.2 Billings and Payments 49
15.3 Alternative Forms of Notice 49
15.4 Operations and Maintenance Notice. 49

Article 16. Force Majeure 49
Article 17. Default 49
17.1 Default 49
17.1.1 General 49
17.1.2 Right to Terminate 50
Article 18. Indemnity, Consequential Damages and Insurance 50
18.1 Indemnity 50
18.1.1 Indemnified Person 50
18.1.2 Indemnifying Party 50
18.1.3 Indemnity Procedures 51
18.2 Consequential Damages 51
18.3 Insurance 52
Article 19. Assignment 53
Article 20. Severability 54
Article 21. Comparability 54
Article 22. Confidentiality 54
22.1 Confidentiality 54
22.1.1 Term 55
22.1.2 Scope 55
22.1.3 Release of Confidential Information 55
22.1.4 Rights 56
22.1.5 No Warranties 56
22.1.6 Standard of Care 56
22.1.7 Order of Disclosure 56
22.1.8 Termination of Agreement 56
22.1.9 Remedies 57
22.1.10 Disclosure to OPUC or its Staff 57
Article 23. Environmental Releases 58
Article 24. Information Requirements 58
24.1 Information Acquisition 58
24.2 Information Submission by Transmission Provider 58
24.3 Updated Information Submission by Interconnection Customer 58
24.4 Information Supplementation 59
Article 25. Information Access and Audit Rights 60
25.1 Information Access 60
25.2 Reporting of Non-Force Majeure Events 60

25.3 Audit Rights **60**
25.4 Audit Rights Periods **60**
25.4.1 Audit Rights Period for Construction-Related Accounts and Records **60**
25.4.2 Audit Rights Period for All Other Accounts and Records **61**
25.5 Audit Results **61**
Article 26. Subcontractors **61**
26.1 General **61**
26.2 Responsibility of Principal. **61**
26.3 No Limitation by Insurance **61**
Article 27. Disputes **61**
27.1 Submission **61**
27.2 Arbitration of Disputes **62**
27.3 External Arbitration Procedures **64**
27.4 Arbitration Decisions **64**
27.5 Costs **64**
Article 28. Representations, Warranties, and Covenants **64**
28.1 General **64**
28.1.1 Good Standing **64**
28.1.2 Authority **65**
28.1.3 No Conflict **65**
28.1.4 Consent and Approval **65**
Article 29 Miscellaneous **65**
29.1 Binding Effect **65**
29.2 Conflicts **65**
29.3 Rules of Interpretation **66**
29.4 Entire Agreement **66**
29.5 No Third-Party Beneficiaries **66**
29.6 Waiver **66**
29.7 Headings **67**
29.8 Multiple Counterparts **67**
29.9 Amendment **67**
29.10 Modification by the Parties **67**
29.11 Reservation of Rights **67**
29.12 No Partnership **67**

Appendix A to QF-LGIA - Interconnection Facilities, Network Upgrades and Distribution Upgrades 1

Appendix B to QF-LGIA - Milestones 1

Appendix C to QF-LGIA - Interconnection Details 1

Appendix D to QF-LGIA - Security Arrangements Details 1

Appendix E to QF-LGIA - Commercial Operation Date 1

Appendix F to QF-LGIA - Addresses for Delivery of Notices and Billings 1

Notices: 1

STANDARD QUALIFYING FACILITY LARGE GENERATOR INTERCONNECTION AGREEMENT

THIS STANDARD QUALIFYING FACILITY LARGE GENERATOR INTERCONNECTION AGREEMENT ("Agreement" or "QF-LGIA") is made and entered into this 8th day of April 2021, by and between **Madras Solar PV1, LLC,** a corporation organized and existing under the laws of the State of Oregon ("Interconnection Customer" with a Large Generating Facility), and **Portland General Electric Company**, a corporation organized and existing under the laws of the State of Oregon ("Transmission Provider and/or Transmission Owner"). Interconnection Customer and Transmission Provider each may be referred to singly as a "Party" or collectively as the "Parties."

Recitals

WHEREAS, Transmission Provider operates the Transmission System; and

WHEREAS, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and

WHEREAS, Interconnection Customer has completed the certification process for the Generating Facility as a qualifying cogeneration facility or qualifying small power production facility ("Qualifying Facility" or "QF") within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3; and

WHEREAS, the Oregon Public Utility Commission has jurisdiction to establish minimum criteria that a qualifying cogeneration facility or qualifying small power production facility must meet in order to operate in Oregon; and

WHEREAS, Interconnection Customer and Transmission Provider have agreed to enter into this QF-LGIA for the purpose of interconnecting the Large Generating Facility with the Transmission System.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this QF-LGIA, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

EXHIBIT 3

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Agreement shall mean this QF-LGIA entered into by and between Interconnection Customer and Transmission Provider.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the QF-LGIA.

Breaching Party shall mean a Party that is in Breach of the QF-LGIA. **Business Day** shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shalt mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the QF-LGIA.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by an Applicable Reliability Council.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the QF-LGIA.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the QF-LGIA becomes effective upon execution by the Parties.

Emergency Condition shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or

(3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided that Interconnection Customer is not obligated by the QF-LGIA to possess black start capability.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et* seq.

FERC shall mean the Federal Energy Regulatory Commission (FERC) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device or devices for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities. The Generating Facility is and shall remain a Qualifying Facility.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing

authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean the entity identified in the first paragraph of this QF-LGIA that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities or ICIF shall mean all facilities and equipment, as identified in Appendix A of the QF-LGIA, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities, Distribution Upgrades and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Article 8 of the QF-LGIP.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the QF-LGIP for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the QF-LGIP.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the QF-LGIP for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the QF-LGIP, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the QF-LGIA and, if applicable, the Transmission Provider's OATT.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the QF-LGIP.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the QF-LGIP.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the QF-LGIP for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Large Generator Interconnection Agreement or **LGIA** shall mean the form of interconnection agreement applicable to an Interconnection Request under the Transmission Provider's OATT pertaining to a Large Generating Facility that is not a Qualifying Facility.

Large Generator Interconnection Procedures or **LGIP** shall mean the interconnection procedures contained in the Transmission Provider's OATT that are applicable to an Interconnection Request pertaining to a Large Generating Facility.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the QF-LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the QF-LGIA at the one or more metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, other communications conductors, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Net Output shall mean all energy and capacity produced by the Generating Facility and delivered to the Point of Delivery, net of transformation, transmission, or other losses, if any, and less Station Power.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the QF-LGIA or its performance.

Obligated Entity shall mean the entity with a contractual obligation to construct Network Upgrades.

OATT shall mean the Transmission Provider's Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission ("FERC").

OPUC shall mean the Public Utility Commission of Oregon.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the QF-LGIP for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the QF-LGIA, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Delivery shall mean the point on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider.

Point of Interconnection shall mean the point, as set forth in Appendix A to the QF-LGIA, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Power System Stabilizers shall have the meaning designated in the guidelines and procedures established by the applicable Reliability Council.

Power Purchase Agreement ("PPA") shall mean a separate agreement between the Transmission Provider and Interconnection Customer, the terms of which govern the sale by the Interconnection Customer and the purchase by the Transmission Provider of the Net Output of the Interconnection Customer's Qualifying Facility, pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

QF-LGIA shall mean the Qualifying Facility Large Generator Interconnection Agreement.

QF-LGIP shall mean the Qualifying Facility Large Generator Interconnection Procedures applicable to any large Generating Facility that is also a Qualifying Facility and which seeks to interconnect to the Transmission Provider's Transmission System or Distribution system in Oregon.

Qualifying Facility or **QF** shall mean a qualifying cogeneration facility or qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the QF-LGIA, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 10 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the QF-LGIA.

Station Power shall mean electric power used in the process of producing power at Interconnection Customer's Generating Facility, including but not limited to the electric power necessary for auxiliary equipment such as pumps, blowers, fans, fuel transportation systems, similar auxiliary systems that are a necessary and integral part of the power production process, and other parasitic loads involved in the generating process.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the QF-LGIA to the extent necessary.

Transmission Provider shall mean the applicable Utility.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the QF-LGIA, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the OATT.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

Article 2. Effective Date, Term, and Termination

2.1 Effective Date

This QF-LGIA shall become effective upon execution by the Parties.

2.2 Term of Agreement

Subject to the provisions of Article 2.3, this QF-LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as agreed upon by the parties and shall be automatically renewed for each successive one-year period thereafter provided: (1) Interconnection Customer gives Transmission Provider written notice no less than 90 calendar days in advance of the end of the initial ten year term and no less than 90 calendar days before the end of each successive one year renewal term of Interconnection Customer's desire to renew; and (2) Transmission Provider reasonably determines that no material change has occurred to the specific circumstances surrounding the individual QF-LGIA, including government regulation of the subject matter of the QF-LGIA and Transmission Provider's interconnection standards. If Interconnection Customer gives notice of desire to renew in accordance with this Article 2.2, Transmission Provider shall give Interconnection Customer notice of Transmission Provider's determination regarding the existence of material change, made in accordance with this Article 2.2, no later than 60 calendar days after receipt of the Interconnection Customer's notice of desire to renew. If Transmission Provider reasonably determines that there has been a material change in the circumstances surrounding the QF-LGIA, then the Interconnection Customer must initiate a new interconnection request under the QF-LGIP in order to pursue a successor interconnection agreement to this QF-LGIA.

2.3 Termination Procedures

2.3.1 Written Notice

This QF-LGIA may be terminated by Interconnection Customer after giving Transmission Provider ninety (90) Calendar Days advance written notice, or by Transmission Provider notifying OPUC after the Generating Facility permanently ceases Commercial Operation.

2.3.2 Default

Either Party may terminate this QF-LGIA in accordance with Article 17.

2.3.3 Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

2.3.4 Change in Qualifying Facilities Status

Interconnection Customer has represented that its Generating Facility is a Qualifying Facility. As a Qualifying Facility selling its Net Output exclusively to Transmission Provider, the OPUC has regulatory authority over the interconnection of the Generating Facility with Transmission Provider's Transmission System. If, at any time during the term of this QF-LGIA, all or a portion of the output of the Qualifying Facility is scheduled to be, or is, sold to someone other than Transmission Provider, then regulatory authority for this interconnection will fall under the jurisdiction of the FERC and this QF-LGIA shall terminate upon the date such electric output from the Generating Facility is first produced for sale to such other party, and no later than sixty (60) days prior to such termination date, Interconnection Customer shall enter into a new Large Generator Interconnection Agreement with Transmission Provider pursuant to Transmission Provider's OATT. Interconnection Customer acknowledges and agrees that it may take substantially more than sixty (60) days to submit an interconnection request and complete any required portions of the interconnection process under the Transmission Provider's OATT before the Transmission Provider can offer the Interconnection Customer a new Large Generator Interconnection Agreement under the OATT. Interconnection Customer is responsible for initiating the interconnection process under the Transmission Provider's OATT early enough to allow for completion of the interconnection process before the Interconnection Customer requires a new Large Generator Interconnection Agreement under this Article 2.3.4.

2.4 Termination Costs

If a Party elects to terminate this QF-LGIA pursuant to Article 2.3 above, each Party shall pay all costs incurred on its behalf (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the

responsibility of the Terminating Party under this QF-LGIA. In the event of termination by a Party, the Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this QF-LGIA, unless otherwise ordered or approved by the OPUC:

2.4.1 With respect to any portion of Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this QF-LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which Transmission Provider has incurred expenses and has not been reimbursed by Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this QF-LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection

Upon termination of this QF-LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this QF-LGIA or such non-terminating Party otherwise is responsible for these costs under this QF-LGIA.

2.6 Survival

This QF-LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this QF-LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this QF-LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this QF-LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 Filing

Transmission Provider shall file this QF-LGIA (and any amendment hereto) with the OPUC. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If Interconnection Customer has executed this QF-LGIA, or any amendment thereto, Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements. Because the Point of Interconnection is within the boundary of a FERC-regulated hydroelectric project (the Pelton-Round Butte Project, FERC No. 2030, which is co-owned by Transmission Provider and the Confederated Tribes of Warm Springs), Transmission Provider will be required to file a request at FERC for approval of a non-project use of project land. This filing will include an opportunity for review and comment by resource agencies and stakeholders, including the Transmission Provider's co-licensee, the Confederated Tribes of Warm Springs. Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to this filing by: (1) completing required environmental and cultural resources studies and reports in support of the filing; and (2) providing any information reasonably requested by Transmission Provider in connection with such filing, including, but not limited to, information necessary to address stakeholder and agency comments during the drafting and review process.

3.2 Recordkeeping and Reporting Requirements

(1) The public utility must maintain a record of the following information for at least two years: (a) The number of complete large generator interconnection applications received; (b) The time required to complete the review process for each application; and (c) The reasons for the approval or denial of each application.

(2) For as long as an interconnection customer's large generator facility is interconnected to a public utility's transmission or distribution system, the interconnecting public utility must maintain copies of the interconnection application, interconnection agreement, and certificate of completion for the large generator facility. The public utility must provide a copy of the interconnection customer's records to the interconnection customer within 15 business days after receipt of a written request.

(3) The public utility must submit an annual report to the Commission summarizing the public utility's interconnection activities for the previous calendar year. The annual report must be filed by May 30 and must include the following information: (a) The number of complete large generator interconnection applications received; (b) The number of large generator facility interconnections completed; (c) The types of large generator facilities applying for interconnection and the nameplate capacity of the facilities; (d) The interconnection facilities required to accommodate the interconnection of a large generator facility and the estimated costs of those facilities; and (e) The system upgrades required to accommodate the interconnection of a large generator facility and the estimated costs of those upgrades.

Article 4. Scope of Service

4.1 Network Resource Interconnection Service

Interconnection Customer will be provided Network Resource Interconnection Service under this QF-LGIA.

4.1.1 The Product

Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers in the same manner as all other Network Resources.

4.1.2 Transmission Delivery Service Implications

Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the OATT on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's Net Output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although Network Resource Interconnection Service does not convey a reservation of transmission service, any Network Customer under the OATT can utilize its network service under the OATT to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses Network Resources. A Large Generating Facility receiving Network Resource Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated. The

provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades. Because such studies and upgrades would be associated with a request for delivery service under the OATT, cost responsibility for the studies and upgrades would be in accordance with FERC's policy for pricing transmission delivery services.

Network Resource Interconnection Service does not necessarily provide Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on Transmission Provider's Transmission System, Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in Transmission Provider's Transmission System in the same manner as Network Resources.

4.2 Provision of Service

Transmission Provider shall provide Network Resource Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 Performance Standards

Each Party shall perform all of its obligations under this QF-LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this QF-LGIA for its compliance therewith. If such Party is a Transmission Provider or Transmission Owner, then that Party shall amend the QF-LGIA and if required by the OPUC, submit the amendment to the OPUC for approval.

4.4 No Transmission Delivery Service

No Agreement to Purchase Output. The execution of this QF-LGIA does not constitute a request for, nor the provision of, any transmission delivery service under Transmission Provider's OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. Additionally, the execution of the QF-LGIA does not constitute an agreement to purchase the Net Output or any portion of the output of the Large Generating Facility.

4.5 Interconnection Customer Provided Services

The services provided by Interconnection Customer under this QF-LGIA are set forth in Article 9.6 and Article 13.4.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 Options

Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below, for completion of Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.

5.1.1 Standard Option

Transmission Provider shall design, procure, and construct Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Transmission Provider reasonably expects that it will not be able to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, Transmission Provider shall promptly provide written notice to Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option

If the dates designated by Interconnection Customer are acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 Option to Build

If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2. Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 Negotiated Option

If Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build

If Interconnection Customer assumes responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades:

(1) Interconnection Customer shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law and Applicable Reliability Standards to which Transmission Provider would be subject in the engineering, procurement or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of Transmission Provider's Interconnection Facilities Stand Alone Network Upgrades;

(4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) at any time during construction, Transmission Provider shall have the right to gain unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, upon a rigorous showing of cause, Interconnection Customer shall be obligated to remedy deficiencies in that portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider;

(9) Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades to Transmission Provider;

(10) Transmission Provider shall approve and accept for operation and maintenance Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Interconnection Facilities and Stand Alone Network Upgrades are built to the standards and specifications required by Transmission Provider.

5.3 Liquidated Damages.

The actual damages to Interconnection Customer, in the event Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by Interconnection Customer and accepted by Transmission Provider pursuant to Article 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by Transmission Provider to Interconnection Customer in the event that Transmission Provider does not complete any portion of Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades for which Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by Transmission Provider to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this QF-LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for the Transmission Provider's failure to meet its schedule.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless Interconnection Customer would have been able to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) Transmission Provider's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an QF-LGIA or LGIA with Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure, including, but not limited to, failure to obtain any required regulatory approval necessary to fulfill Transmission Provider's responsibilities necessary for the Large Generating Facility to commence operation; (3) the Interconnection Customer has assumed responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 Power System Stabilizers

The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish

minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. The requirements of this paragraph shall not apply to wind generators.

5.5 Equipment Procurement

If responsibility for construction of Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by Transmission Provider, then Transmission Provider shall commence design of Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 Transmission Provider has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 Construction Commencement

Transmission Provider shall commence construction of Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 Transmission Provider has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 Work Progress

The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, Interconnection Customer determines that the completion of Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of Transmission Provider's Interconnection Facilities will be required.

5.8 Information Exchange

As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 Limited Operation

If any of Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and Interconnection Customer's Interconnection Facilities may operate prior to the completion of Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this QF-LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.

5.10 Interconnection Customer's Interconnection Facilities ("ICIF")

Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 Interconnection Customer's Interconnection Facility Specifications

Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission

Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 Transmission Provider's Review

Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider.

5.10.3 ICIF Construction

The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 Transmission Provider's Interconnection Facilities Construction

Transmission Provider's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Transmission Provider shall deliver to Interconnection Customer the "as-built" drawings, information and documents for Transmission Provider's Interconnection Facilities if requested by the Interconnection Customer.

Transmission Provider will obtain control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 Access Rights

Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this QF-LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 Lands of Other Property Owners

If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.

5.14 Permits

Transmission Provider or Transmission Owner and Interconnection Customer each shall be responsible for obtaining all permits, licenses and authorizations that are necessary to construct the Interconnection Facilities, Distribution Facilities, Stand Alone Network Upgrades, or Network Upgrades for which it has construction responsibility under this QF-LGIA in compliance with Applicable Laws and Regulations.

Transmission Provider or Transmission Owner and Interconnection Customer shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations.

5.15 Early Construction of Base Case Facilities

Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades

required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 Suspension

Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this QF-LGIA with the condition that Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this QF-LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this QF-LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this QF-LGIA on or before the expiration of three (3) years following commencement of such suspension, this QF-LGIA shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Transmission Provider, if no effective date is specified.

5.17 Taxes

5.17.1 Interconnection Customer Payments Not Taxable

The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants

In accordance with IRS Notice 2016-36, Interconnection Customer represents and covenants that (i) in the case of electricity generated at the Large Generating Facility and wheeled over any Transmission Owner's Transmission System, ownership of the wheeled electricity generated at the Large Generating Facility will remain with the generator prior to its transmission onto the grid (This ownership requirement is deemed to be satisfied if title to electricity wheeled passes to the purchaser at the busbar on the generator's end of the intertie, as intertie is defined in IRS Notice 2016-36), (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to Transmission Provider for Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Transmission Provider's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 2016-36, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 2016-36. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Provider

Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from the cost consequences of any current tax liability imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this QF-LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this QF-LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; provided, however, that Transmission

Provider may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the 10 year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount

Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider ("Current Taxes") on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this QF-LGIA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate x (Gross Income Amount — Present Value of Tax Depreciation))/(1-Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 Private Letter Ruling or Change or Clarification of Law

At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this QF-LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge.

Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

5.17.6 Subsequent Taxable Events

If, within 10 years from the date on which the relevant Transmission Provider's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 2016-36, or (iii) this QF-LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 2016-36.

5.17.7 Contests

In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission

Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 Refund

In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this QF-LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this QF-LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this QF-LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) interest on any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 Taxes Other Than Income Taxes

Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this QF-LGIA. Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest.

Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 Transmission Owners Who Are Not Transmission Providers

If Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this QF-LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of Transmission Provider under this Article 5.17 of this QF-LGIA.

5.18 Tax Status

Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this QF-LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification

5.19.1 General

Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 Standards

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this QF-LGIA, Applicable Reliability Standards and Good Utility Practice.

5.19.3 Modification Costs

Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service to a third party under Transmission Provider's OATT. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer's Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 Pre-Commercial Operation Date Testing and Modifications

Prior to the Commercial Operation Date, Transmission Provider shall test Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 Post-Commercial Operation Date Testing and Modifications

Each Party shall perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice. Interconnection Customer shall bear the cost of all testing and modifications required under this Article 6.2.

6.3 Right to Observe Testing

Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 Right to Inspect

Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or the Power System Stabilizers or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this QF-LGIA.

Article 7. Metering

7.1 General

Each Party shall comply with the Applicable Reliability Council requirements regarding metering. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 Station Power Metering

To the extent the Large Generating Facility relies, or may need to rely, on Station Power not generated by the Large Generating Facility itself, the Parties shall agree to and provide for the installation of Metering Equipment at such locations as necessary to meter the quantities of Station Power delivered to and used by the Large Generating Facility. The intent of such Metering Equipment is to allow the Parties to accurately meter Station Power so that the Net Output of the Large Generating Facility can be accurately ascertained on an hourly basis. Unless otherwise agreed by the Parties, the Transmission Provider shall install the Metering Equipment required by this Article 7.2 at such location or locations as necessary to meter Station Power for the purposes of this Article 7.2 and Transmission Provider shall own, operate, test and maintain such Station Power Metering Equipment. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment required by this Article 7.2.

7.3 Check Meters

Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this QF-LGIA, except as provided in Article 7.5 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.4 Standards

Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable American National Standards Institute ("ANSI") standards.

7.5 Testing of Metering Equipment

Transmission Provider shall, at Interconnection Customer's expense, inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.6 Metering Data

At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 Interconnection Customer Obligations

Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data. Interconnection Customer shall bear all costs associated with obtaining and maintaining the communication services and equipment required by this Article 8 including the cost of any ground potential rise or other communication-related study or testing required by a telecommunications provider or required by Good Utility Practice.

8.2 Remote Terminal Unit

Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall, at Interconnection Customer's expense, correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation

Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

Article 9. Operations

9.1 General

Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 Transmission Provider Obligations

Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this QF-LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this QF-LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.3 Interconnection Customer Obligations

Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this QF-LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of Transmission Provider's Control Area, as such requirements are set forth in Appendix C, Interconnection Details, of this QF-LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this QF-LGIA.

9.4 Start-Up and Synchronization

Consistent with the Parties' mutually acceptable procedures, Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to Transmission Provider's Transmission System.

9.5 Reactive Power

9.5.1 Power Factor Design Criteria

Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

9.5.2 Voltage Schedules

Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify Transmission Provider.

9.5.2.1 Governors and Regulators

Whenever the Large Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its speed governors and voltage regulators in automatic operation. If the Large Generating Facility's speed governors and voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.5.3 Payment for Reactive Power

Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in

Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.6 Outages and Interruptions

9.6.1 Outages

9.6.1.1 Outage Authority and Coordination

Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.6.1.2 Outage Schedules

Transmission Provider shall post scheduled outages of its transmission facilities on its Open Access Same-Time Information System ("OASIS"). Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four (24) month period. Interconnection Customer shall update its planned maintenance schedule as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities.

9.6.1.3 Outage Restoration

If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.6.2 Interruption of Service

If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.6.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.6.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all Generating Facilities directly connected to the Transmission System;

9.6.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.6.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer and Transmission Provider;

9.6.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.6.3 Under-Frequency and Over Frequency Conditions

The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure "ride through" capability of the Transmission System. The Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with Transmission Provider in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Large Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.6.4 System Protection and Other Control Requirements

9.6.4.1 System Protection Facilities

Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on Transmission Provider's Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

9.6.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.6.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.6.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's units.

9.6.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.6.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.6.5 Requirements for Protection

In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.6.6 Power Quality

Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

9.7 Switching and Tagging Rule

Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.8 Use of Interconnection Facilities by Third Parties

9.8.1 Purpose of Interconnection Facilities

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.8.2 Third Party Users

If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third-party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third-party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to the OPUC for resolution.

9.9 Disturbance Analysis Data Exchange

The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 Transmission Provider Obligations

Transmission Provider shall maintain the Transmission System and Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this QF-LGIA.

10.2 Interconnection Customer Obligations

Interconnection Customer shall maintain the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this QF-LGIA.

10.3 Coordination

The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 Secondary Systems

Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable actual expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 Interconnection Customer Interconnection Facilities

Interconnection Customer shall design, procure, construct, install, own and/or control Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 Transmission Provider's Interconnection Facilities

In accordance with Good Utility Practice, Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.

11.3 Network Upgrades and Distribution Upgrades

Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.

11.4 Special Provisions for Affected Systems

The Interconnection Customer shall be responsible for all costs related to Network Upgrades required on Affected Systems.

11.5 Provision of Security

At least thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Interconnection Customer Compensation

If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.5.3 (Payment for Reactive Power), or 13.4.1 of this QF-LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this QF-LGIA, Transmission Provider agrees to compensate Interconnection Customer in such amount as would have been due Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition

Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 General

Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this QF-

LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 Final Invoice

Within six months after completion of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 Payment

Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by either Party will not constitute a waiver of any rights or claims either Party may have under this QF-LGIA.

12.4 Disputes

In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this QF-LGIA as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii).

Article 13. Emergencies

13.1 Obligations

Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Parties.

13.2 Notice

Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the Transmission System or Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.3 Immediate Action

Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or Interconnection Customer's Interconnection Facilities in response to an Emergency Condition either declared by Transmission Provider or otherwise regarding the Transmission System.

13.4 Transmission Provider Authority

13.4.1 General

Transmission Provider may take whatever actions or inactions with regard to the Transmission System or Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing Interconnection Customer to assist with black start (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and Interconnection Customer's

Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.4.2 Reduction and Disconnection

Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or Interconnection Customer's Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of Transmission Provider pursuant to Transmission Provider's OATT. When Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.5 Interconnection Customer Authority

Consistent with Good Utility Practice and the QF-LGIA and the QF-LGIP, Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions.

13.6 Limited Liability

Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 Regulatory Requirements

Each Party's obligations under this QF-LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. These regulatory requirements include, but are not limited to, certification of the Interconnection Customer's Generating Facility as a QF and approval for the non-project use of project land under Transmission Provider's FERC hydroelectric license for the Pelton-Round Butte Project, FERC No. 2030. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this QF-LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978.

14.2 Governing Law

14.2.1 The validity, interpretation and performance of this QF-LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This QF-LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 General

Unless otherwise provided in this QF-LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this QF-LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments

Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by a Party to the other and not required by this QF-LGIA to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F.

15.4 Operations and Maintenance Notice.

Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 General

No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this QF-LGIA or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in Article 17.1.2, the Breaching Party shall have thirty (30)

Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 Right to Terminate

If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this QF-LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this QF-LGIA, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this QF-LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 Indemnity

The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this QF-LGIA on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

18.1.1 Indemnified Person

If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 Indemnifying Party

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 Indemnity Procedures

Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.2 Consequential Damages

Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this QF-LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 Insurance

Each party shall, at its own expense, maintain in force throughout the period of this QF-LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this QF-LGIA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each,

except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this QF-LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this QF-LGIA.

18.3.9 Within ten (10) days following execution of this QF-LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this QF-LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this article, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this QF-LGIA.

Article 19. Assignment

19.1 Assignment

This QF-LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this QF-LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this QF-LGIA; and provided further that Interconnection Customer shall have the right to assign this QF-LGIA, without the consent of Transmission Provider, for collateral

security purposes to aid in providing financing for the Large Generating Facility, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this article is void and ineffective. Any assignment under this QF-LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 Severability

If any provision in this QF-LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this QF-LGIA; provided that if Interconnection Customer (or any third party, but only if such third party is not acting at the direction of Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 Comparability

The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this QF-LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information. The release of Confidential Information shall be subject to Applicable Laws and Regulations and Applicable Reliability Standards.

22.1.1 Term

During the term of this QF-LGIA, and for a period of three (3) years after the expiration or termination of this QF-LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this QF-LGIA; or (6) is required**,** in accordance with Article 22.1.7 of the QF-LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this QF-LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this QF-LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this QF-LGIA or its regulatory requirements.

22.1.7 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this QF-LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 Termination of Agreement

Upon termination of this QF-LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 Disclosure to OPUC or its Staff

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR section 1 b.20, if OPUC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this QF-LGIA, the Party shall provide the requested information to OPUC or its staff, within the time provided for in the request for information. In providing the information to OPUC or its staff, the Party must request that the information be treated as confidential and non-public by OPUC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this QF-LGIA prior to the release of the Confidential Information to OPUC or its staff. The Party shall notify the other Party to the QF-LGIA when it is notified by OPUC or its staff that a request to release Confidential Information has been received by OPUC, at which time either of the Parties may respond before such information would be made public.

22.1.11

Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this QF-LGIA ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this QF-LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information

under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

Article 23. Environmental Releases

23.1 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 Information Acquisition

Transmission Provider and Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 Information Submission by Transmission Provider

The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Interconnection Customer

The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the

LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation

Prior to the Commercial Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to Transmission Provider for each individual generating unit in a station.

Subsequent to the Commercial Operation Date, Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 Information Access

Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this QF-LGIA; and (ii) carry out its obligations and responsibilities under this QF-LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this QF-LGIA.

25.2 Reporting of Non-Force Majeure Events

Each Party (the "notifying Party") shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this QF-LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this QF-LGIA.

25.3 Audit Rights

Subject to the requirements of confidentiality under Article 22 of this QF-LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this QF-LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this QF-LGIA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods

25.4.1 Audit Rights Period for Construction-Related Accounts and Records

Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 Audit Rights Period for All Other Accounts and Records

Accounts and records related to either Party's performance or satisfaction of all obligations under this QF-LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 General

Nothing in this QF-LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this QF-LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this QF-LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this QF-LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 of this QF-LGIA. Any applicable obligation imposed by this QF-LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this QF-LGIA or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this QF-LGIA.

27.2 Arbitration of Disputes

(1) An interconnecting public utility or an interconnection applicant may petition the Commission for arbitration of disputes arising during review of an application to interconnect a large generator facility or during negotiation of an interconnection agreement. If the public utility or the applicant petitions the Commission to arbitrate their dispute, then the Commission will use an administrative law judge (ALJ) as arbitrator unless workload constraints necessitate the use of an outside arbitrator.

(2) A petition for arbitration of an interconnection agreement must contain: (a) A statement of all unresolved issues; (b) A description of each party's position on the unresolved issues; and (c) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

(3) A petition for arbitration of a dispute arising during review of an application to interconnect a large generator facility must contain: (a) A statement of all unresolved issues; (b) A description of each party's position on the unresolved issues; and (c) A proposed resolution for each unresolved issue.

(4) Respondent may file a response within 25 calendar days of the petition for arbitration. In the response, the respondent must address each issue listed in the petition, describe the respondent's position on those issues, and present any additional issues for which the respondent seeks resolution.

(5) The filing of a petition for arbitration of a dispute arising during review of an application to interconnect a large generator facility does not affect the application's queue position.

(6) The arbitration is conducted in a manner similar to a contested case proceeding, and the arbitrator has the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules, but the arbitration process is streamlined. The arbitrator holds an early conference to discuss processing of the case. The arbitrator establishes the schedule and decides whether an oral hearing is necessary. After the oral hearing or other procedures (for example, rounds of comments), each party

submits its final proposed interconnection agreement or resolution of disputed issues. The arbitrator chooses between the two final offers. If neither offer is consistent with applicable statutes, Commission rules, and Commission policies, then the arbitrator will make a decision that meets those requirements.

(7) The arbitrator may allow formal discovery only to the extent deemed necessary. Parties are required to make good faith attempts to exchange information relevant to any disputed issue in an informal, voluntary, and prompt manner. Unresolved discovery disputes are resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if the arbitrator determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.

(8) Only the two negotiating parties have full party status. The arbitrator may confer with Commission staff for assistance throughout the arbitration process.

(9) To keep the process moving forward, appeals to the Commission are not allowed during the arbitration process. An arbitrator may certify a question to the Commission if the arbitrator believes it is necessary.

(10) To accommodate the need for flexibility, the arbitrator may use different procedures so long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.

(11) The arbitrator must serve the arbitration decision on the interconnecting public utility and the interconnection applicant. The parties may file comments on the arbitration decision with the Commission within 10 calendar days after service.

(12) The Commission must accept, reject, or modify an arbitration decision within 30 calendar days after service of the decision.

(13) Within 14 calendar days after the Commission issues an order on a petition for arbitration of an interconnection agreement, the petitioner must prepare an interconnection agreement complying with the terms of the decision and serve it on respondent. Respondent must either sign and file the interconnection agreement or file objections to it within 10 calendar days of service of the agreement. If objections are filed, respondent must state how the interconnection agreement fails to comply with the Commission order and offer substitute language complying with the decision. The Commission must approve or reject a filed interconnection agreement within 20 calendar days of its filing or the agreement is deemed approved.

(14) If petitioner, without respondent's consent, fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.

(15) The public utility and the applicant may agree to hire an outside arbitrator rather than file a petition with the Commission pursuant to article 27.3.

27.3 External Arbitration Procedures

Any arbitration initiated under this QF-LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules"; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.4 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this QF-LGIA and shall have no power to modify or change any provision of this QF-LGIA in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act.

27.5 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties, and Covenants

28.1 General

Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this QF-LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this QF-LGIA.

28.1.2 Authority

Such Party has the right, power and authority to enter into this QF-LGIA, to become a Party hereto and to perform its obligations hereunder. This QF-LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 No Conflict

The execution, delivery and performance of this QF-LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval

Such Party has sought or obtained, or, in accordance with this QF-LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this QF-LGIA, and it will provide to any Governmental Authority notice of any actions under this QF-LGIA that are required by Applicable Laws and Regulations.

Article 29 Miscellaneous

29.1 Binding Effect

This QF-LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

29.2 Conflicts

In the event of a conflict between the body of this QF-LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this QF-LGIA shall prevail and be deemed the final intent of the Parties.

29.3 Rules of Interpretation

This QF-LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this QF-LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this QF-LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this QF-LGIA or such Appendix to this QF-LGIA, or such Section to the QF-LG1P or such Appendix to the QP-LGIP, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this QF-LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

29.4 Entire Agreement

This QF-LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this QF-LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this QF-LGIA.

29.5 No Third-Party Beneficiaries

This QF-LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

29.6 Waiver

The failure of a Party to this QF-LGIA to insist, on any occasion, upon strict performance of any provision of this QF-LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this QF-LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this QF-LGIA. Termination or Default of this QF-LGIA for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this QF-LGIA shall, if requested, be provided in writing.

29.7 Headings

The descriptive headings of the various Articles of this QF-LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this QF-LGIA.

29.8 Multiple Counterparts

This QF-LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

29.9 Amendment

The Parties may by mutual agreement amend this QF-LGIA by a written instrument duly executed by the Parties.

29.10 Modification by the Parties

The Parties may by mutual agreement amend the Appendices to this QF-LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this QF-LGIA upon satisfaction of all Applicable Laws and Regulations.

29.11 Reservation of Rights

Transmission Provider shall have the right to make a unilateral filing with OPUC to modify this QF-LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under applicable provision of the Federal or Oregon law or the OPUC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with OPUC to modify this QF-LGIA pursuant to any other applicable provision of Federal or Oregon law or the OPUC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before OPUC in which such modifications may be considered.

29.12 No Partnership

This QF-LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.

EXHIBIT 3

IN WITNESS WHEREOF, the Parties have executed this QF-LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

clc

PORTLAND GENERAL ELECTRIC COMPANY	**MADRAS SOLAR PV1, LLC**
By: Maria M. Pope (Apr 12, 2021 10:00 PDT)	By: gorman john (Apr 10, 2021 00:50 GMT+7)
Title: President and CEO	Title: Authorized Signatory
Date: April 8, 2021	Date: April 8, 2021

EXHIBIT 3

Appendix A to QF-LGIA - Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities

(a) Interconnection Customer's Interconnection Facilities:

The Interconnection Customer will design, permit, build, and maintain a 230 kV generator lead line from the Interconnection Customer's generation site to a new PGE-owned Point of Interconnection (POI) substation. The Point of Change of Ownership between the Interconnection Customer's generator lead line and the POI substation will be at the last dead-end structure before entering the POI substation. The Interconnection Customer's Interconnection Facilities will be designed, constructed, and operated in accordance with the PGE Interconnection Requirements document available on the PGE OASIS site.

(b) Transmission Provider's Interconnection Facilities:

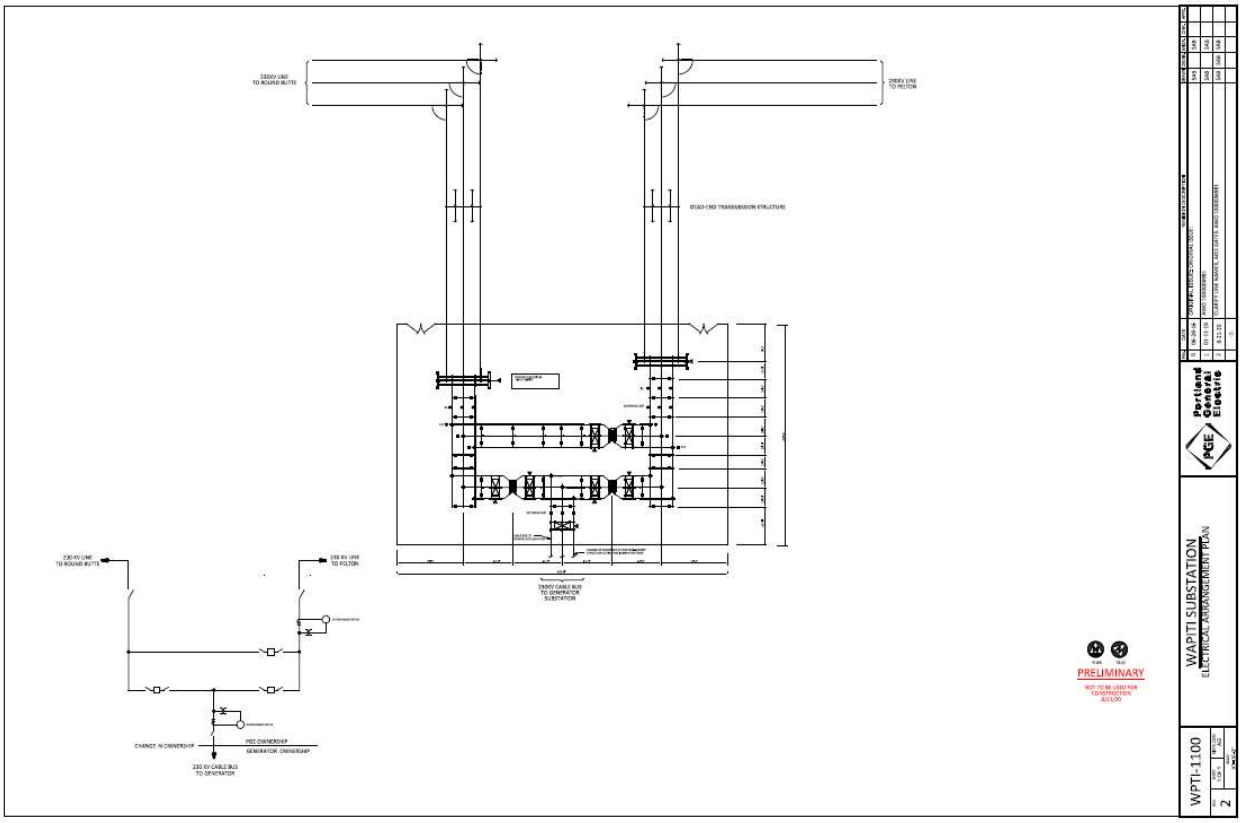
The conductors and any disconnecting devices between the Point of Change of Ownership and the POI substation bus are considered the Transmission Provider's Interconnection Facilities.

2. Network Upgrades:

(a) Stand Alone Network Upgrades:

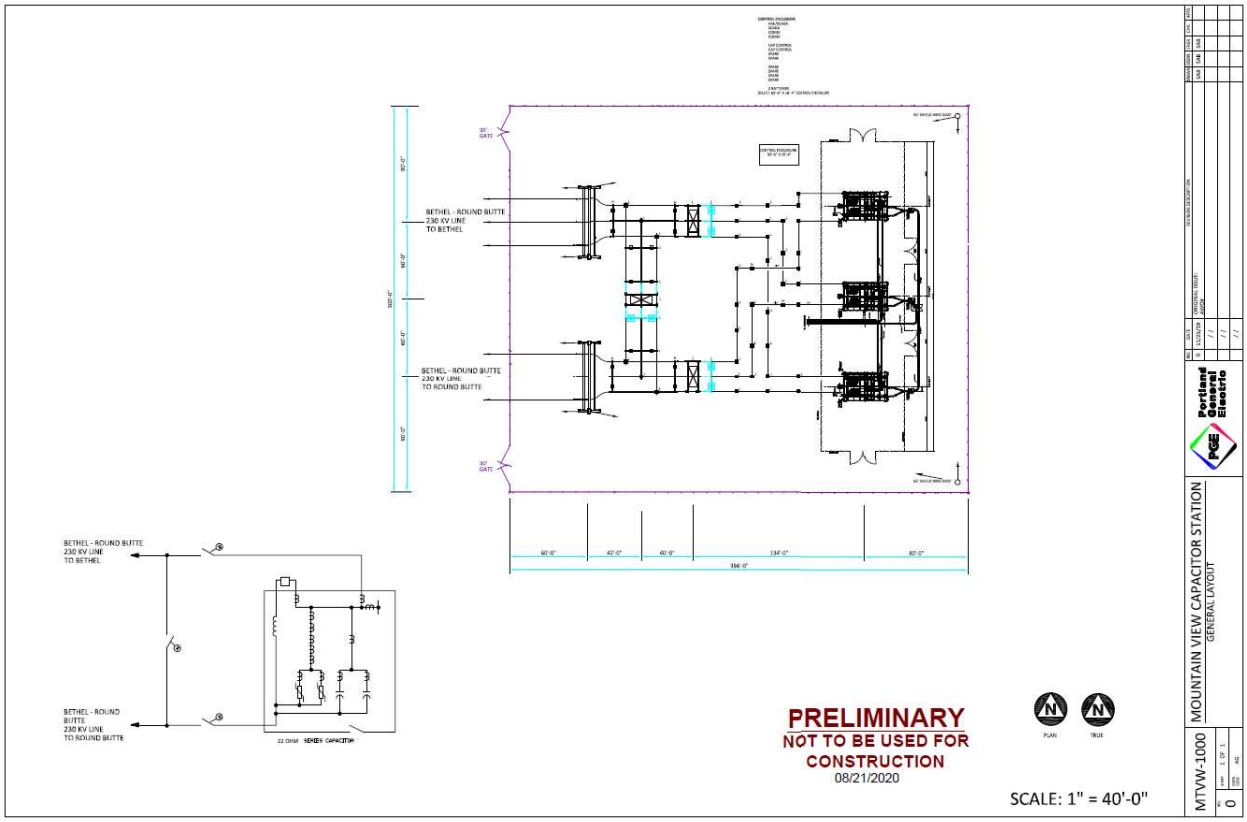
New Point of Interconnection (POI) Substation – The POI substation will have a fenced area of 233' x 348' with a surface area of 2.2 acres. The substation will include three 230 kV circuit breakers and nine 230 kV disconnect switches connected in a ring bus configuration. The substation will include all necessary associated land, bus, controls (including the control enclosure), metering, relay, and communication facilities constructed to accommodate the interconnection of the Interconnection Customer's Interconnection Facility. A microwave tower will be constructed at the POI substation to communicate with the PGE communications network.

Figure 1:



Series Capacitor Substation – A new 230 kV series capacitor will be constructed in a new substation adjacent to the existing PGE-owned Round Butte substation on property owned by PGE. This substation will have a fenced area of approximately 300' x 356' with a surface area of 3 acres. The substation will include three 230 kV disconnect switches and all necessary associated land, bus, controls (including the control enclosure), metering, relay, and communication facilities constructed to accommodate the new series capacitor substation. The Series Capacitor Substation is depicted below in Figure 2.

Figure 2:



(b) Other Network Upgrades:

Transmission Line Modifications – Transmission line modifications are required to connect the POI substation and the series capacitor substation to the PGE Transmission System. The POI substation will require the construction of four new steel transmission structures and the existing Pelton-Round Butte 230 kV line will be split, creating the Pelton-POI Substation 230 kV line and the Round Butte-POI Substation 230 kV line. The series capacitor substation will require the construction of eight new steel transmission structures and the Bethel-Round Butte 230 kV line will be modified to tie into the new series capacitor substation.

3. Distribution Upgrades:

There are no Distribution Upgrades required for this generation interconnection.

4. Point of Interconnection:

A new 230 kV substation on PGE's 230 kV Pelton-Round Butte 230 kV generation lead line.

5. Point of Change of Ownership:

The Point of Change of Ownership will be last dead-end structure before entering the POI substation as indicated on Figure 1 above.

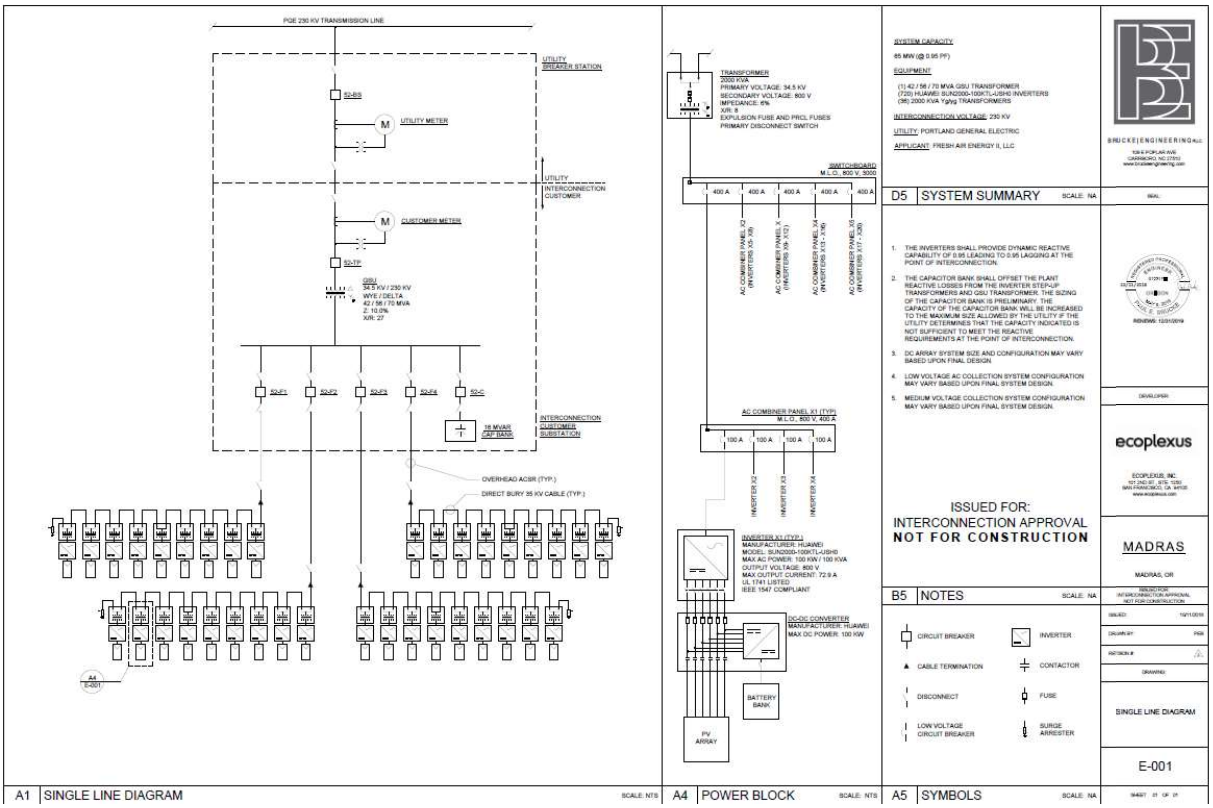
6. Customer's Generation Facilities and Associated Responsibilities:

The Interconnection Customer, at its own cost, is responsible for the design, engineering, procurement, installation, operation, maintenance, testing, and repairs of the new equipment on the Interconnection Customer's side of the Point of Interconnection as such POI is defined by the Interconnection Facilities Study for QF-LGIP #17-068.

In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers, and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System that is not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System.

Customer's one-line diagram is depicted below in Figure 3.

Figure 3:



7. Cost Summary:

Total Project Cost Estimate	
Point of Interconnection Substation	$9,533,897
Series Capacitor Substation	$12,100,456
Transmission Modification	$1,841,034
Total	**$23,475,387**

Appendix B to QF-LGIA - Milestones

Within 15 business days from receipt of final executed QF-LGIA, Interconnection Customer shall provide one of the following:

☐ (A) reasonable evidence of continued Site Control to the Transmission Provider; or
☐ (B) posting with the Transmission Provider a $250,000 non-refundable additional security, which shall be applied toward Transmission Provider's Interconnection Facility costs.

Additionally, within 15 business days from receipt of final executed QF-LGIA, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at Interconnection Customer election, has been achieved:

☐ (i) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility;
☐ (ii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility;
☐ (iii) execution of a contract for the sale of electric energy or capacity from the Large Generation Facility; or
☐ (iv) application for an air, water, or land use permit.

The Interconnection Customer and the Transmission Provider mutually agree to the following dates:

- Date by which the Interconnection Customer shall provide security in the amount of $23,475,387.00 to the Transmission Provider in accordance with Article 11.5: **April 30, 2021**

- Date by which Interconnection Customer shall provide written authorization to Transmission Provider to proceed with design and procurement: **April 30, 2021**

- Date by which Interconnection Customer shall provide the location for the substation and new line: **April 30, 2021**

- Date by which Transmission Provider shall have land at Point of Interconnection surveyed and marked: **June 1, 2021**

- Date by which Transmission Provider will begin WECC path rating process: **July 1, 2021**

- Date by which Interconnection Customer shall provide to Transmission Provider a copy of all required permits and easements: **July 15, 2021**

- Date by which Interconnection Customer shall provide to Transmission Provider a fully executed and acknowledged warranty deed conveying free and clear title of the new Point of Interconnection substation site to Transmission Provider, together with legal and practical access to the same: **July 15, 2021**

- Date by which Interconnection Customer shall provide written authorization to Transmission Provider to proceed with construction: **September 1, 2021**

- Date by which Transmission Provider will file with FERC to request approval for non-project use of project land under its FERC hydroelectric license for the Pelton-Round Butte Project, FERC No. 2030: **120 days following results of Interconnection Customer's completed environmental and cultural resources studies to support the request to FERC for approval for non-project use**

- Transmission Provider's Interconnection Facilities In-Service Date: **February 1, 2024*+**

  * Interconnection Customer is responsible for back feed power and station service arrangements prior to and after In-Service Date. Any power flows to or from the Generating Facility at the Point of Interconnection that are due to station service at the Generating Facility or any other service shall be metered and accounted for under separate service arrangements rather than under this LGIA. Station Service power must be arranged for and acquired from the local retail electricity service provider as the Generating Facility is located outside of PGE's retail service territory. The metering of any power flows to or from the Generating Facility at the Point of Interconnection shall be revenue quality metering.

  + As indicated in the Facilities Study, there are many factors outside of the Transmission Provider's control that could extend the time required for completing construction of the facilities discussed above. These factors include, but are not limited to, unexpected delays in the permitting process, required environmental and cultural resources reviews, FERC hydro license approval for the non-project use of project land, the WECC Path Rating Process, long lead times for obtaining electrical equipment, shortages of qualified workers, the effects of the COVID-19 pandemic, contractual negotiations with third parties, and inclement weather conditions.

    Additionally, because the line to which the Interconnection Customer seeks to interconnect is part of the Pelton-Round Butte Project, FERC No. 2030, which is jointly owned by Transmission Provider and the Confederated Tribes of Warm Springs, Transmission Provider notes that the Confederated Tribes of Warm Springs could take positions in any legal or regulatory proceeding relating to this LGIA that could result in delays and/or denials in efforts to obtain necessary approvals.

- Initial Synchronization Date: **April 1, 2024*****

** Interconnection Customer must request Initial Synchronization from Transmission Provider, and the Transmission Provider must approve, in writing before Initial Synchronization can occur.

- Commercial Operation Date: **April 28, 2024** ***+++

*** Interconnection Customer must request Commercial Operation from Transmission Provider in writing

+++ Transmission Provider must provide written approval for Commercial Operation

Construction Option: Construction of all Transmission Provider's Network Upgrades and Interconnection Facilities shall be done in accordance with Article 5.1 of this LGIA.

Interconnection Customer elects to exercise the option to build the Stand-Alone Network Upgrades identified in Appendix A and pursuant to section 5.1.3 of this agreement.

Appendix C to QF-LGIA - Interconnection Details

The Interconnection Customer shall comply with *PGE's Facility Connection Requirements for Generation Resources* located on PGE's OASIS website.

PGE's Facility Connection Requirements for Generation Resources are incorporated herein by reference and apply to all interconnections regardless of electrical source type, including but not limited to, synchronous generation facilities, induction generation facilities, and inverter-based facilities (i.e. solar photovoltaic or battery energy storage facilities).

I. Project Details

- Project Name – Madras Solar
- Size – 65 MW
- Generating Facility Details – Solar Photovoltaic and Battery Energy Storage
- Generation Type – Solar Photovoltaic
- Interconnection Type – NRIS
- Location – New 230 kV substation approximately 4.9 miles north of PGE's Round Butte Substation near Madras, Oregon
- Power Factor – .95 leading to .95 lagging of full rated output at the Point of Interconnection
- Point of Interconnection – New 230 kV substation approximately 4.9 miles north of PGE's Round Butte Substation near Madras, Oregon
- Point of Change of Ownership – The last dead-end structure prior to entering the new POI substation.
- Generating Facility will be IEEE1547 and UL1741 compliant prior to energization.

Standard Operational Requirements

a) Reliability Standards

"Applicable Reliability Standards," as defined in Article 1 of the QF-LGIA, include the requirements and guidelines of the Applicable Reliability Council, including the regional reliability standards promulgated by the Western Electricity Coordinating Council (WECC), such as WECC's Automatic Voltage Regulators (AVR) standard.

b) Notice of Change in Generation and/or Charging Level

Whenever the net generation of the Generating Facility changes due to a mechanical event or equipment failure by an amount greater than or equal to 5 megawatts within the scheduling hour, the Interconnection Customer must notify the Transmission Provider immediately. Interconnection Customer must provide such notice for both planned and unplanned changes in generation levels. The required notice may be given by electronic communication (such as email) or by telephone.

Generation level will be limited and shall not exceed 65 MW at the Point of Interconnection at any time.

PGE's Balancing Authority Operator (BAO), Phone: (503) 464-8560.

c) Notice of Change of Generation On-Line/Off-Line Status

Interconnection Customer must notify PGE's BAO at the phone number provided above as to when the generation is going off-line and as to when the generation will be coming on-line. Interconnection Customer must also provide reasons for either event. At least 48 hours advance notice is required for planned events . For unplanned events, Interconnection Customer must provide notice as soon as possible.

d) Voltage and Frequency Response

Each interconnected unit of the Generating Facility shall be capable, at all times (including during an electric disturbance), of continuous operation at 0.95 to 1.05 per unit (pu) voltage of nominal voltage, as measured at the Point of Interconnection, and shall be kept online and in operation during frequency deviations beyond the range of 59.5 to 60.5 Hz to the extent required by the Applicable Reliability Standards.

e) Reactive Power

In addition to the requirements in Section 9.5.1, Power Factor Design Criteria, each interconnected unit of the Generating Facility shall produce or absorb Reactive Power between 0.95 leading and 0.95 lagging power factor for steady state conditions to meet voltage schedules specified by PGE's BAO. Reactive Power will be measured at the Point of Interconnection for both synchronous and non-synchronous generators. Each interconnected unit of the Generating Facility also shall produce or absorb Reactive Power up to the temporary overload capability of the interconnected unit of the Generating Facility during electric disturbances. An interconnected unit of the Generating Facility may satisfy its Reactive Power and voltage requirements either by its operation or by using separate devices.

f) Disconnection, Switching, and Clearance Procedures

Whenever disconnecting an interconnected unit of the Generating Facility from Transmission Provider's Transmission System, the Interconnection Customer shall perform such disconnection in accordance with Good Utility Practice and in compliance with Transmission Provider's transmission facility clearance procedures, as may be amended, reasonably and without discrimination to the Interconnection Customer, by Transmission Operator in its sole discretion from time to time. Any switching on the Transmission Provider's Transmission System shall be performed by personnel on the Transmission Provider's certified switch person list. If Transmission Provider amends its transmission facility clearance procedures, it will notify the Interconnection Customer as soon as practicable thereafter and provide to the Interconnection Customer a copy of the new procedures.

g) Organized Market Requirements

The Transmission Provider is a participant in the California ISO Energy Imbalance Market or other organized market ("Organized Market"). The Generating Facility is interconnected to Transmission Provider's Transmission System. Interconnection Customer shall comply, and ensure that the Generating Facility complies, with any applicable requirements, from time to time in effect, of the tariff(s) and business practice(s) of the Transmission Provider, as posted on the OASIS, specifically including the Organized Market requirements of the Transmission Provider.

h) Automatic Data Transfer

Throughout the term of this QF-LGIA, Interconnection Customer shall provide the data specified below by automatic data transfer to the Control Center of the Transmission Provider:

Status of Interconnection Customer's 230 kV breaker at Interconnection Customer's Interconnection Substation and, if required by the Transmission Provider, the 34.5 kV feeder breakers at the Interconnection Customer's Collector Substation;

MW and MVAR at each inverter feeder breaker and total MW and MVAR for the Generating Facility;

Status of each breaker or switch in supplemental capacitor banks (if included);

Total MVAR from each capacitor bank.

i) Additional Data

Interconnection Customer shall, at its sole expense, provide any additional Generating Facility data, forecasts, or other information reasonably required and necessary for Transmission Provider to operate its Transmission System in accordance with Good Utility Practice and any other applicable operating requirements.

j) O&M Costs Assigned to Interconnection Customer

Consistent with this QF-LGIA, including, without limitation, Article 10.5 hereof, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities (such expenses including overheads are sometimes referred to in this Appendix C as "O&M Costs").

O&M Costs include for example all reasonable costs incurred for Transmission Provider's operations and maintenance activities associated with Transmission Provider's Interconnection Facilities , as well as any modifications needed for any Transmission Provider to obtain billing and meter data, energy management system displays, plant information database information, schedule data and any additional plant information that is required by the Reliability Coordinator or an Organized Market, as well as any additional project-related information that is needed at any Transmission Provider's control center for operational and reliability purposes.

Transmission Provider shall invoice Interconnection Customer for O&M Costs. Interconnection Customer shall submit payment for O&M Costs to Transmission Provider per the instructions indicated on each invoice within thirty (30) days following receipt of invoice.

Appendix D to QF-LGIA - Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. The OPUC and FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix E to QF-LGIA - Commercial Operation Date

This Appendix E is a part of the QF-LGIA between Transmission Provider and Interconnection Customer.

[Date]

PGE Transmission Services
121 SW Salmon St., 3WTC0407
Portland, OR 97204

Re: Madras Large Generating Facility

Dear Mr. Foster:

On [Date] [Interconnection Customer] has completed Trial Operation of Unit No. . This letter confirms that [Interconnection Customer] commenced Commercial Operation of the Large Generating Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Interconnection Customer Representative]

Appendix F to QF-LGIA - Addresses for Delivery of Notices and Billings

Notices:

Transmission Provider:

Portland General Electric Company, Transmission Services
Manager, Transmission Contracts 3WTC0409
121 SW Salmon St.
Portland, OR 97214
Email: transmission.provider@pgn.com
Telephone: (503) 464-7945

Interconnection Customer:

_____
_____
_____
_____
_____
_____

Billings and Payments:

Transmission Provider:

Portland General Electric Company, Transmission Services
Manager, Transmission Contracts 3WTC0407
121 SW Salmon St.
Portland, OR 97214
Email: Transmission.Provider@pgn.com
Telephone: (503) 464-7945

Interconnection Customer:

_____
_____
_____
_____
_____
_____

EXHIBIT 4

Madras Solar-PGE QF-LGIA First Amendment, dated July 11, 2023

FIRST AMENDMENT

TO QUALIFYING FACILITY LARGE GENERATOR INTERCONNECTION AGREEMENT

Madras Solar, LLC

This First Amendment ("Amendment") to the Qualifying Facility Large Generator Interconnection Agreement dated April 8, 2021 ("Agreement") by and between Portland General Electric Company ("PGE") and Madras Solar, LLC ("Interconnection Customer") is effective as of July 11, 2023.

WHEREAS, the Parties agree to revise Appendix A, Appendix B, Appendix C, and Appendix F.

WHEREAS, Article 29.9 of the Agreement requires the Parties to mutually agree to an amendment by written instrument.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties as set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- Appendix A: Update certain facilities definitions to show option to build, update certain diagrams
- Appendix B: Add/update multiple milestones, new Commercial Operations Date
- Appendix C: Update generation definition
- Appendix F: Update PGE email address and add Interconnection Customer contact information

In the event there is a conflict between this Amendment and the Agreement, this Amendment shall prevail. All other provisions of the Agreement remain in full force and effect. No amendment to the terms and conditions of this Amendment shall be valid and binding on the parties unless made in writing and signed by an authorized representative of each of the parties. This Amendment is subject to the terms and conditions set forth in the Agreement. Disputes regarding interpretation of this Amendment will be resolved pursuant to the dispute resolution process set forth in the Agreement.

Madras Solar, LLC		**Portland General Electric Company**	
Signature:	John Gorman John Gorman (Jul 11, 2023 17:02 GMT+7)	Signature:	Maria Pope (Jul 19, 2023 15:50 PDT) DJL
Printed Name:	John Gorman	Printed Name:	Maria Pope
Title:	CEO	Title:	President and CEO
Date:	Jul 11, 2023	Date:	Jul 19, 2023

EXHIBIT 4

The below list of appendices are attached to this agreement and incorporated herein

Appendix A

Appendix B

Appendix C

Appendix F

EXHIBIT 4

Appendix A to QF-LGIA - Interconnection Facilities, Network Upgrades and Distribution Upgrades (Revision 1)

1. Interconnection Facilities

(a) Interconnection Customer's Interconnection Facilities:

The Interconnection Customer will design, permit, build, and maintain a 230 kV generator lead line from the Interconnection Customer's generation site to a new PGE-owned Point of Interconnection (POI) substation. The Point of Change of Ownership between the Interconnection Customer's generator lead line and the POI substation will be at the last dead-end structure before entering the POI substation. The Interconnection Customer's Interconnection Facilities will be designed, constructed, and operated in accordance with the PGE Interconnection Requirements document available on the PGE OASIS site.

(b) Transmission Provider's Interconnection Facilities:

The conductors and any disconnecting devices between the Point of Change of Ownership and the POI substation bus are considered the Transmission Provider's Interconnection Facilities. To be designed and built by the Interconnection Customer as the Option to Build was exercised.

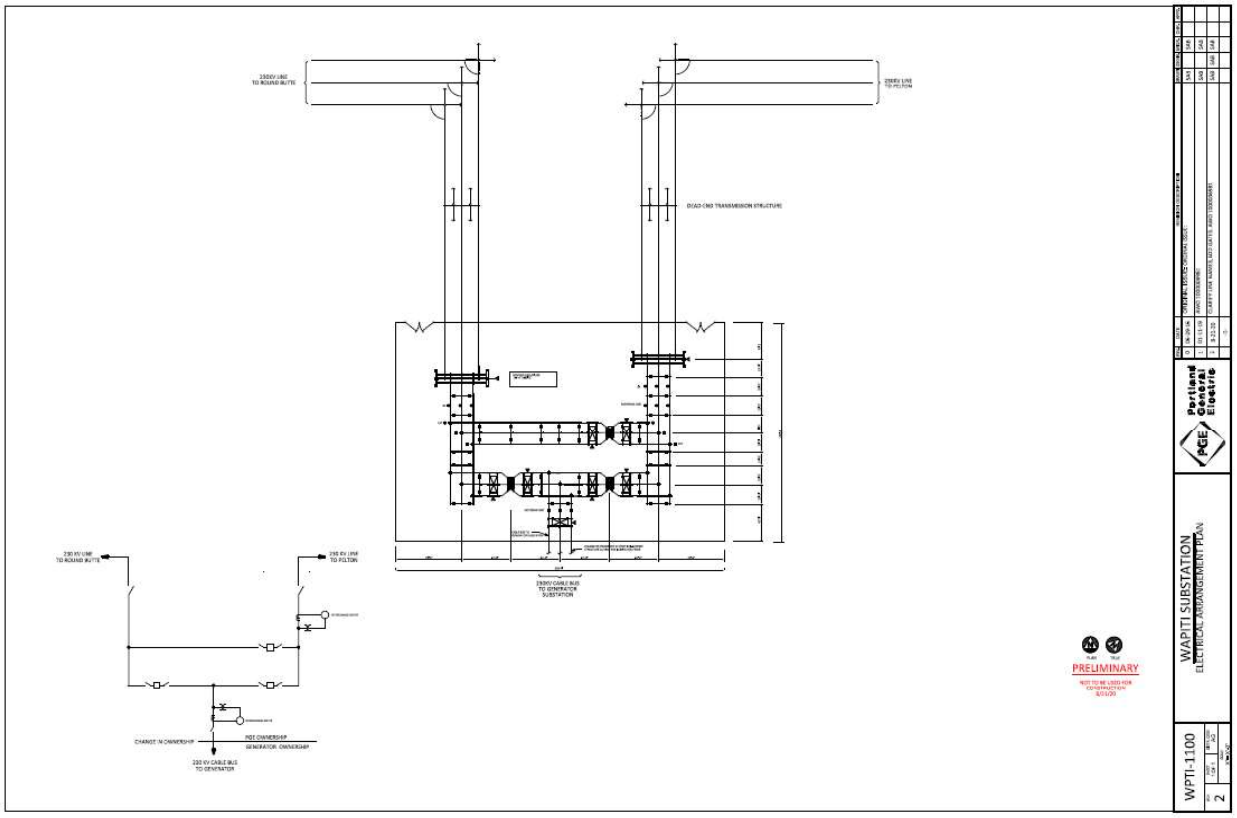
2. Network Upgrades:

(a) Stand Alone Network Upgrades:

New Point of Interconnection (POI) Substation – The POI substation will have a fenced area of 233' x 348' with a surface area of 2.2 acres. The substation will include three 230 kV circuit breakers and nine 230 kV disconnect switches connected in a ring bus configuration. The substation will include all necessary associated land, bus, controls (including the control enclosure), metering, relay, and communication facilities constructed to accommodate the interconnection of the Interconnection Customer's Interconnection Facility. To be designed and built by the Interconnection Customer as the Option to Build was exercised.

EXHIBIT 4

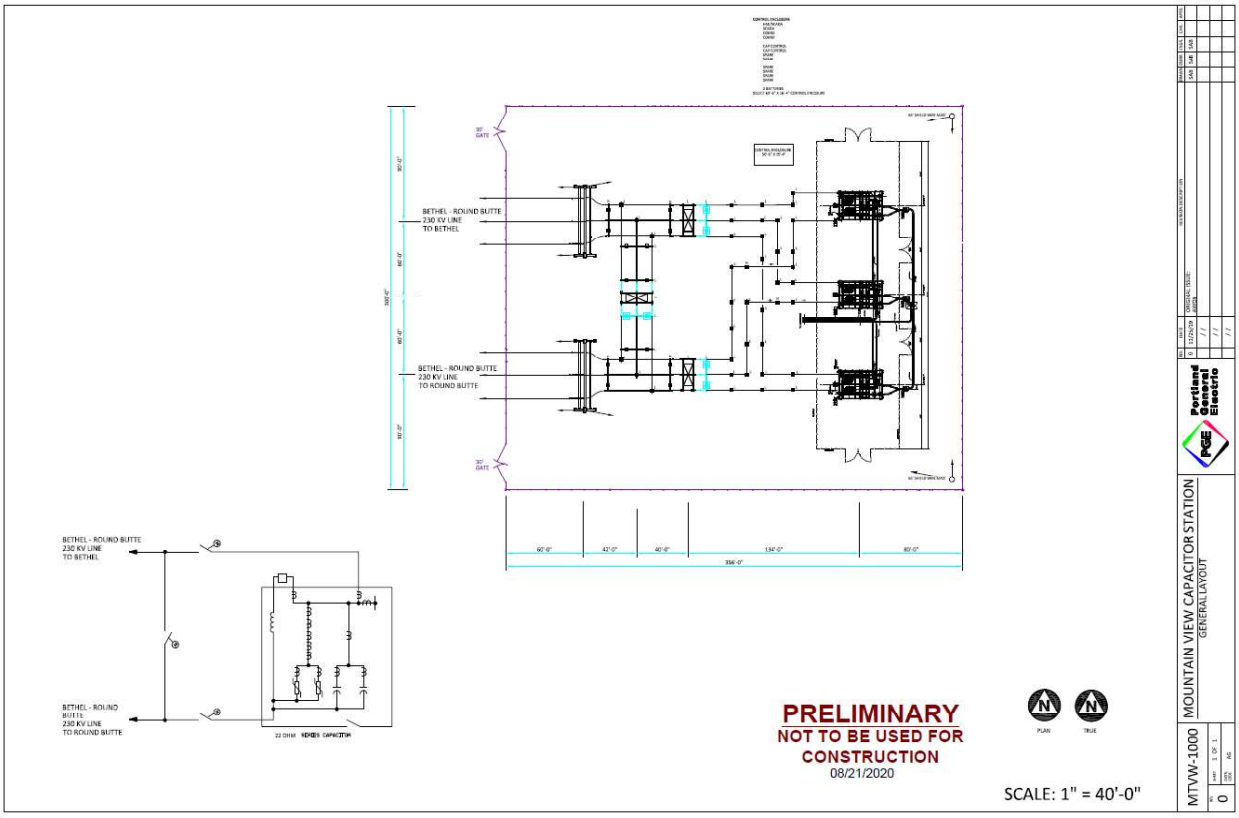
Figure 1:



Series Capacitor Substation – A new 230 kV series capacitor will be constructed in a new substation adjacent to the existing PGE-owned Round Butte substation on property owned by PGE. This substation will have a fenced area of approximately 300' x 356' with a surface area of 3 acres. The substation will include three 230 kV disconnect switches and all necessary associated land, bus, controls (including the control enclosure), metering, relay, and communication facilities constructed to accommodate the new series capacitor substation. To be designed and built by the Interconnection Customer as the Option to Build was exercised. The Series Capacitor Substation is depicted below in Figure 2.

EXHIBIT 4

Figure 2:



(b) Other Network Upgrades:

Transmission Line Modifications – Transmission line modifications are required to connect the POI substation and the series capacitor substation to the PGE Transmission System. The POI substation will require the construction of four new steel transmission structures and the existing Pelton-Round Butte 230 kV line will be split, creating the Pelton-POI Substation 230 kV line and the Round Butte-POI Substation 230 kV line. The series capacitor substation will require the construction of eight new steel transmission structures and the Bethel-Round Butte 230 kV line will be modified to tie into the new series capacitor substation.

3. Distribution Upgrades:

There are no Distribution Upgrades required for this generation interconnection.

4. Point of Interconnection:

A new 230 kV substation on PGE's 230 kV Pelton-Round Butte 230 kV generation lead line.

5. Point of Change of Ownership:

The Point of Change of Ownership will be last dead-end structure before entering the POI substation as indicated on Figure 1 above.

6. Customer's Generation Facilities and Associated Responsibilities:

The Interconnection Customer, at its own cost, is responsible for the design, engineering, procurement, installation, operation, maintenance, testing, and repairs of the new equipment on the Interconnection Customer's side of the Point of Interconnection as such POI is defined by the Interconnection Facilities Study for QF-LGIP #17-068.

In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers, and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System that is not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System.

Customer's one-line diagram is depicted below in Figure 3.

Figure 3:

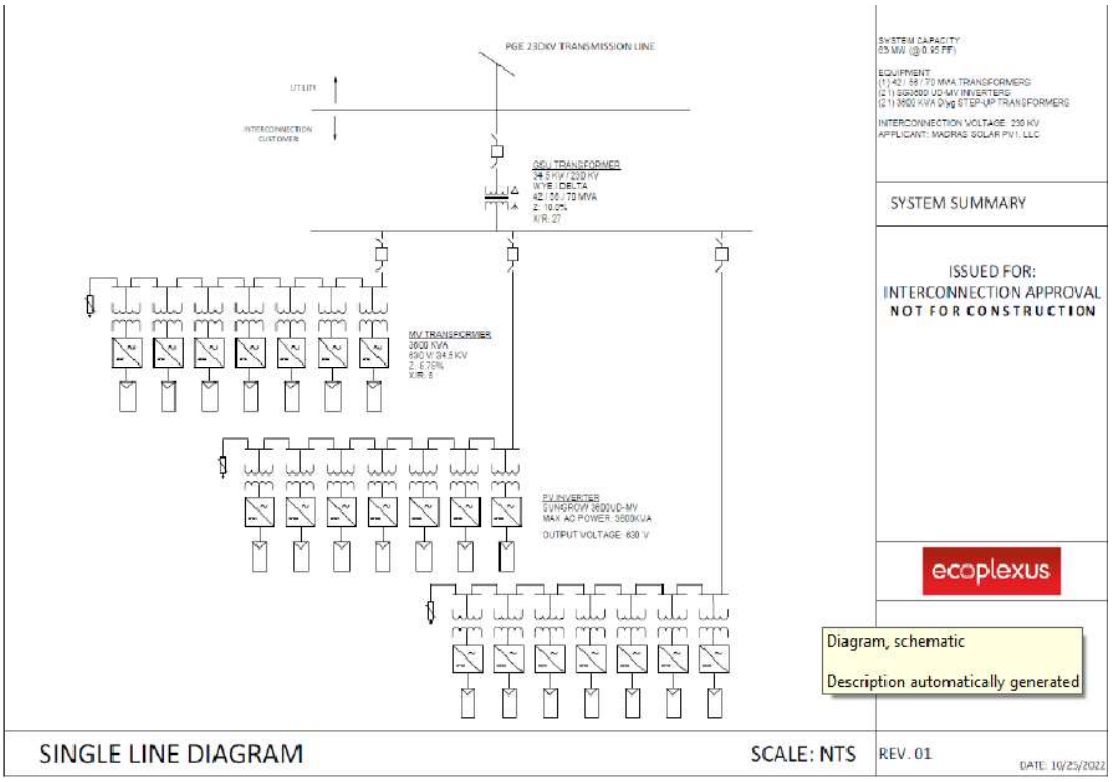


EXHIBIT 4

7. Cost Summary:

Total Project Cost Estimate	
Point of Interconnection Substation	$9,533,897
Series Capacitor Substation	$12,100,456
Transmission Modification	$1,841,034
Total	**$23,475,387**

Appendix B to QF-LGIA – Milestones (Revision 1)

Within 15 business days from receipt of final executed QF-LGIA, Interconnection Customer shall provide one of the following:

☐ (A) reasonable evidence of continued Site Control to the Transmission Provider;
or
☐ (B) posting with the Transmission Provider a $250,000 non-refundable additional security, which shall be applied toward Transmission Provider's Interconnection Facility costs.

Additionally, within 15 business days from receipt of final executed QF-LGIA, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at Interconnection Customer election, has been achieved:

☐ (i) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility;
☐ (ii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility;
☐ (iii) execution of a contract for the sale of electric energy or capacity from the Large Generation Facility; or
☐ (iv) application for an air, water, or land use permit.

The Interconnection Customer and the Transmission Provider mutually agree to the following dates:

- Date by which the Interconnection Customer shall provide security in the amount of $23,475,387.00 to the Transmission Provider in accordance with Article 11.5: **April 30, 2021** *Complete*

- Date by which Interconnection Customer shall provide written authorization to Transmission Provider to proceed with design and procurement: **April 30, 2021** *Complete*

- Date by which Interconnection Customer shall provide the location for the Point of Interconnection substation and new line: **April 30, 2021** *Complete*

- Interconnection Customer agrees to proposed QF-LGIA Amendment: **July 10, 2023**

- Date by which Interconnection Customer shall provide to Transmission Provider a complete construction schedule with milestone dates that include 30%, 60%, 90% and/or IFC drawing package submittals for both the POI and FSC facilities: **September 29, 2023**

- Date by which Interconnection Customer shall request outage(s) for connection of FSC and/or POI substation: **October 1, 2023**

- Date by which Interconnection Customer will submit required information to support Transmission Provider request for non-project use of project land under its FERC hydroelectric license for the Pelton-Round Butte Project, FERC No. 2030: **October 31, 2023**

- Date by which Interconnection Customer shall provide to Transmission Provider a 30% drawing set for both the POI and FSC facilities: **October 31, 2023**

- Date by which Interconnection Customer shall have land at Point of Interconnection surveyed and marked: **October 31, 2023**

- Date by which Transmission Provider will file with FERC to request approval for non-project use of project land under its FERC hydroelectric license for the Pelton-Round Butte Project, FERC No. 2030: **120 days following: (1) results of Interconnection Customer's completed environmental and cultural resources studies to support the request to FERC for approval for non-project use, along with all required federal, state, and local environmental permits; and (2) support for the FERC application in writing from the Joint Licensee of the Pelton-Round Butte Project, the Confederated Tribes of Warm Springs. Will be complete no later than December 30, 2023 provided (1) and (2) are completed**

- Outage(s) approved/scheduled for connection of FSC and/or POI substation: **Upon approval of the 90% engineering design packages for respective facilities.†**

  † While a single outage may be requested, the physical interconnection of the respective facilities may require separate, coordinated outages. Transmission Provider will work to accommodate outages within the requested window(s), and may at its discretion, adjust timelines to accommodate regulatory requirements.

- Date by which Interconnection Customer shall provide to Transmission Provider a copy of all required permits and easements: **April 15, 2024**

- Date by which, per standard Transmission Provider practice, Interconnection Customer shall provide to Transmission Provider a fully executed and acknowledged warranty deed from landowner conveying free and clear title of the new Point of Interconnection substation site to Transmission Provider, together with legal and practical access to the same: **June 14, 2024**

- Date by which Interconnection Customer shall provide written authorization to Transmission Provider to proceed with construction: **June 2, 2024**

- *Approximate date by which FERC to deliver decision to Transmission Provider filed request for non-project use of project land under its FERC hydroelectric license for the Pelton-Round Butte Project, FERC No. 2030 in order to begin construction on the land:* ***December 30, 2024***

- Transmission Provider's Interconnection Facilities (as built by the Interconnection Customer) In-Service Date: **October 31, 2025*+**

* Interconnection Customer is responsible for back feed power and station service arrangements prior to and after In-Service Date. Any power flows to or from the Generating Facility at the Point of Interconnection that are due to station service at the Generating Facility or any other service shall be metered and accounted for under separate service arrangements rather than under this LGIA. Station Service power must be arranged for and acquired from the local retail electricity service provider as the Generating Facility is located outside of PGE's retail service territory. The metering of any power flows to or from the Generating Facility at the Point of Interconnection shall be revenue quality metering.

\+ As indicated in the Facilities Study, there are many factors outside of the Transmission Provider's control that could extend the time required for completing construction of the facilities discussed above. These factors include, but are not limited to, unexpected delays in the permitting process, required environmental and cultural resources reviews, FERC hydro license approval for the non-project use of project land, the WECC Path Rating Process, long lead times for obtaining electrical equipment, shortages of qualified workers, the effects of the COVID-19 pandemic, contractual negotiations with third parties, and inclement weather conditions.

Additionally, because the line to which the Interconnection Customer seeks to interconnect is part of the Pelton-Round Butte Project, FERC No. 2030, which is jointly owned by Transmission Provider and the Confederated Tribes of Warm Springs, Transmission Provider notes that the Confederated Tribes of Warm Springs could take positions in any legal or regulatory proceeding relating to this LGIA that could result in delays and/or denials in efforts to obtain necessary approvals.

- Initial Synchronization Date: **November 30, 2025*****

  ** Interconnection Customer must request Initial Synchronization from Transmission Provider, and the Transmission Provider must approve, in writing before Initial Synchronization can occur.

- Commercial Operation Date: **December 31, 2025** ***+++ †††

  *** Interconnection Customer must request Commercial Operation from Transmission Provider in writing

  +++ Transmission Provider must provide written approval for Commercial Operation

  ††† Transmission Provider agrees to this Commercial Operations Date, and preceding dates to support this date. However, Transmission Provider specifically disclaims any responsibility to Interconnection Customer for ability to satisfy terms of any other agreement entered into by Interconnection Customer for power sales, transmission, or any other aspect not directly

addressed by this Qualifying Facility Large Generator Interconnection Agreement.

Construction Option: Construction of all Transmission Provider's Network Upgrades and Interconnection Facilities shall be done in accordance with Article 5.1.3 of this LGIA, as the Interconnection Customer elects to exercise the option to build the Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades identified in Appendix A .

EXHIBIT 4

Appendix C to QF-LGIA - Interconnection Details (Revision 1)

The Interconnection Customer shall comply with *PGE's Facility Connection Requirements for Generation Resources* located on PGE's OASIS website.

PGE's Facility Connection Requirements for Generation Resources are incorporated herein by reference and apply to all interconnections regardless of electrical source type, including but not limited to, synchronous generation facilities, induction generation facilities, and inverter-based facilities (i.e. solar photovoltaic or battery energy storage facilities).

I. Project Details

- Project Name – Madras Solar
- Size – 63 MW
- Generating Facility Details – Solar Photovoltaic
- Generation Type – Solar Photovoltaic
- Interconnection Type – NRIS
- Location – New 230 kV substation approximately 4.9 miles north of PGE's Round Butte Substation near Madras, Oregon
- Power Factor – .95 leading to .95 lagging of full rated output at the Point of Interconnection
- Point of Interconnection – New 230 kV substation approximately 4.9 miles north of PGE's Round Butte Substation near Madras, Oregon
- Point of Change of Ownership – The last dead-end structure prior to entering the new POI substation.
- Generating Facility will be IEEE1547 and UL1741 compliant prior to energization.

Standard Operational Requirements

a) Reliability Standards

"Applicable Reliability Standards," as defined in Article 1 of the QF-LGIA, include the requirements and guidelines of the Applicable Reliability Council, including the regional reliability standards promulgated by the Western Electricity Coordinating Council (WECC), such as WECC's Automatic Voltage Regulators (AVR) standard.

b) Notice of Change in Generation and/or Charging Level

Whenever the net generation of the Generating Facility changes due to a mechanical event or equipment failure by an amount greater than or equal to 5 megawatts within the scheduling hour, the Interconnection Customer must notify the Transmission Provider immediately. Interconnection Customer must provide such notice for both planned and unplanned changes in generation levels. The required notice may be given by electronic communication (such as email) or by telephone.

Generation level will be limited and shall not exceed 65 MW at the Point of Interconnection at any time.

PGE's Balancing Authority Operator (BAO), Phone: (503) 464-8560.

c) Notice of Change of Generation On-Line/Off-Line Status

Interconnection Customer must notify PGE's BAO at the phone number provided above as to when the generation is going off-line and as to when the generation will be coming on-line. Interconnection Customer must also provide reasons for either event. At least 48 hours advance notice is required for planned events . For unplanned events, Interconnection Customer must provide notice as soon as possible.

d) Voltage and Frequency Response

Each interconnected unit of the Generating Facility shall be capable, at all times (including during an electric disturbance), of continuous operation at 0.95 to 1.05 per unit (pu) voltage of nominal voltage, as measured at the Point of Interconnection, and shall be kept online and in operation during frequency deviations beyond the range of 59.5 to 60.5 Hz to the extent required by the Applicable Reliability Standards.

e) Reactive Power

In addition to the requirements in Section 9.5.1, Power Factor Design Criteria, each interconnected unit of the Generating Facility shall produce or absorb Reactive Power between 0.95 leading and 0.95 lagging power factor for steady state conditions to meet voltage schedules specified by PGE's BAO. Reactive Power will be measured at the Point of Interconnection for both synchronous and non-synchronous generators. Each interconnected unit of the Generating Facility also shall produce or absorb Reactive Power up to the temporary overload capability of the interconnected unit of the Generating Facility during electric disturbances. An interconnected unit of the Generating Facility may satisfy its Reactive Power and voltage requirements either by its operation or by using separate devices.

f) Disconnection, Switching, and Clearance Procedures

Whenever disconnecting an interconnected unit of the Generating Facility from Transmission Provider's Transmission System, the Interconnection Customer shall perform such disconnection in accordance with Good Utility Practice and in compliance with Transmission Provider's transmission facility clearance procedures, as may be amended, reasonably and without discrimination to the Interconnection Customer, by Transmission Operator in its sole discretion from time to time. Any switching on the Transmission Provider's Transmission System shall be performed by personnel on the Transmission Provider's certified switch person list. If Transmission Provider amends its transmission facility clearance procedures, it will notify the Interconnection Customer as soon as practicable thereafter and provide to the Interconnection Customer a copy of the new procedures.

g) Organized Market Requirements

The Transmission Provider is a participant in the California ISO Energy Imbalance Market or other organized market ("Organized Market"). The Generating Facility is interconnected to Transmission Provider's Transmission System. Interconnection Customer shall comply, and ensure that the Generating Facility complies, with any applicable requirements, from time to time in effect, of the tariff(s) and business practice(s) of the Transmission Provider, as posted on the OASIS, specifically including the Organized Market requirements of the Transmission Provider.

h) Automatic Data Transfer

Throughout the term of this QF-LGIA, Interconnection Customer shall provide the data specified below by automatic data transfer to the Control Center of the Transmission Provider:

Status of Interconnection Customer's 230 kV breaker at Interconnection Customer's Interconnection Substation and, if required by the Transmission Provider, the 34.5 kV feeder breakers at the Interconnection Customer's Collector Substation;

MW and MVAR at each inverter feeder breaker and total MW and MVAR for the Generating Facility;

Status of each breaker or switch in supplemental capacitor banks (if included);

Total MVAR from each capacitor bank.

i) Additional Data

Interconnection Customer shall, at its sole expense, provide any additional Generating Facility data, forecasts, or other information reasonably required and necessary for Transmission Provider to operate its Transmission System in accordance with Good Utility Practice and any other applicable operating requirements.

j) O&M Costs Assigned to Interconnection Customer

Consistent with this QF-LGIA, including, without limitation, Article 10.5 hereof, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities (such expenses including overheads are sometimes referred to in this Appendix C as "O&M Costs").

O&M Costs include for example all reasonable costs incurred for Transmission Provider's operations and maintenance activities associated with Transmission Provider's Interconnection Facilities , as well as any modifications needed for any Transmission Provider to obtain billing and meter data, energy management system displays, plant information database information, schedule data and any additional plant information that is required by the Reliability Coordinator or an Organized Market, as well as any additional project-related information that is needed at any Transmission Provider's control center for operational and reliability purposes.

Transmission Provider shall invoice Interconnection Customer for O&M Costs. Interconnection Customer shall submit payment for O&M Costs to Transmission Provider per the instructions indicated on each invoice within thirty (30) days following receipt of invoice.

Appendix D to QF-LGIA - Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. The OPUC and FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

EXHIBIT 4

Appendix F to QF-LGIA - Addresses for Delivery of Notices and Billings (Revision 1)

Notices:

Transmission Provider:

Portland General Electric Company, Transmission Services
Manager, Transmission, Interconnection, and Contract Services
121 SW Salmon St., IOC2215
Portland, OR 97214
Email: transmissionprovider@pgn.com
Telephone: (503) 464-7945

Interconnection Customer:

Madras Solar PV1, LLC
c/o Ecoplexus, Inc.
ATTN: John Gorman
600 Park Offices Drive, Suite 285, Durham, NC 27709
Durham, NC 27709
Email: johng@ecoplexus.com & legalnotices@ecoplexus.com
Telephone: (415) 626-1802

Billings and Payments:

Transmission Provider:

Portland General Electric Company, Transmission Services
Manager, Transmission, Interconnection, and Contract Services
121 SW Salmon St., IOC2215
Portland, OR 97214
Email: TransmissionProvider@pgn.com
Telephone: (503) 464-7945

Interconnection Customer:

Madras Solar PV1, LLC
c/o Ecoplexus, Inc.
ATTN: John Gorman
PO Box 2265
Mansfield, TX 76063
Email: johng@ecoplexus.com and accountspayable@ecoplexus.com
Telephone: (415) 240-4751

Attachment C: Reviewing Agency Consultation and Documents Referenced in Order

ESTERSON Sarah * ODOE

From: Sarah.ESTERSON@energy.oregon.gov
Subject: Madras Solar Energy Facility Site Certificate (Request for Amendment 1) - Call Summary Notes (please confirm)

From: CLARK Jessica S * ODFW <Jessica.S.Clark@odfw.oregon.gov>
Sent: Friday, October 4, 2024 10:38 AM
To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; JACKLE Greg S * ODFW <Greg.S.JACKLE@odfw.oregon.gov>
Cc: THOMPSON Jeremy L * ODFW <Jeremy.L.THOMPSON@odfw.oregon.gov>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>; MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Subject: RE: Madras Solar Energy Facility Site Certificate (Request for Amendment 1) - Call Summary Notes (please confirm)

Hi Sarah,
Thanks for the summary notes! That all looks accurate to me.

Let us know if there is anything else you need help with.

Thanks,

Jessica Clark
Regional Habitat Biologist- Deschutes Watershed
Oregon Department of Fish and Wildlife
61374 Parrell Rd Bend, OR 97702
Office: 541-388-6099
Cell: 541-640-1420
Fax: 541-388-6281

From: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Sent: Wednesday, October 2, 2024 2:12 PM
To: CLARK Jessica S * ODFW <Jessica.S.Clark@odfw.oregon.gov>; JACKLE Greg S * ODFW <Greg.S.JACKLE@odfw.oregon.gov>
Cc: THOMPSON Jeremy L * ODFW <Jeremy.L.THOMPSON@odfw.oregon.gov>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>; MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Subject: Madras Solar Energy Facility Site Certificate (Request for Amendment 1) - Call Summary Notes (please confirm)

Hi everyone,

Thanks again for taking the time to discuss whether there are any changes in fact or law that would impact or change the prior evaluation conducted for the Madras Solar Energy Facility. Based on our discussion, there are no changes that need to be evaluated. Here is a summary of our discussion:

- In June 2024, certificate holder's consultant (Carrie Andrews, Tetra Tech) coordinated with ODFW's District Biologist, Greg Jackle, to confirm whether any prior to new surveys should be conducted at the site to inform extent of changes or current conditions. He expressed that raptor (golden eagle) surveys should be completed.

    - In the amendment request, certificate holder refers to 2023 golden eagle nest monitoring and surveys. The Department has requested that the survey reports be provided for Department/ODFW review/reference.
    - Raptor nest surveys are required through an existing pre-construction condition.
- The facility site's northern boundary runs along an ODFW designated priority wildlife corridor area (PWCA), but generally is sited to avoid the PWCA and therefore would not impact the site's habitat categorization or associated mitigation obligation/HMP.
- There have been no updates to ODFW deer and elk winter range maps that are relevant or that would impact the prior characterization of the site.
- ODFW concurs that the prior habitat categorization of Category 4 with current Incidental Take Permit (ITP) remains valid. Recent fire does not impact habitat categorization.
- ODFW accepts the proposal to incorporate 6.7 acres of what was previously identified as temporary habitat impacts into the HMP, and to apply general revegetation requirements to the 6.7 acres. This results in a lessor monitoring obligation for the certificate holder while still requiring revegetation consistent with the surrounding environment, and increased area for the long-term habitat mitigation area.
- No other comments or concerns.

Threatened and Endangered Species Notes/Questions

- There is no suitable habitat or potential for state-listed T&E species to occur within the site. No concerns.

Please confirm if this summary accurately reflects our discussion or if you have any other comments/concerns related to the amendment request.

Thank you,
Sarah and Chase

OREGON DEPARTMENT OF ENERGY

Sarah T. Esterson
Senior Policy Advisor
550 Capitol St. NE | Salem, OR 97301
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1-800-221-8035
Stay connected!

From: CLARK Jessica S * ODFW <Jessica.S.Clark@odfw.oregon.gov>
Sent: Friday, September 27, 2024 12:51 PM
To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; JACKLE Greg S * ODFW <Greg.S.JACKLE@odfw.oregon.gov>
Cc: THOMPSON Jeremy L * ODFW <Jeremy.L.THOMPSON@odfw.oregon.gov>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>; MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Subject: RE: Madras Solar Energy Facility Site Certificate (Request for Amendment 1) - Request for Review/TEAMs meeting

Hi all,
Next week at least Jeremy and I are available:

- Oct 2 12:00-1:30
- Oct 4 9:00-11:00, 12:30-3:00

Let us know if any of those time slots work for you! Thanks for your coordination on this.

Have a good weekend,

Jessica Clark
Regional Habitat Biologist- Deschutes Watershed
Oregon Department of Fish and Wildlife
61374 Parrell Rd Bend, OR 97702
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Cell: 541-640-1420
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From: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Sent: Thursday, September 26, 2024 7:14 AM
To: CLARK Jessica S * ODFW <Jessica.S.Clark@odfw.oregon.gov>; JACKLE Greg S * ODFW <Greg.S.JACKLE@odfw.oregon.gov>
Cc: THOMPSON Jeremy L * ODFW <Jeremy.L.THOMPSON@odfw.oregon.gov>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>; MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Subject: Madras Solar Energy Facility Site Certificate (Request for Amendment 1) - Request for Review/TEAMs meeting

Good morning ODFW!!

We would like to coordinate ODOE/ODFW review/comments on the Madras Solar Energy Facility, Request for Amendment 1. The changes in the amendment request are limited to a request to extend the construction deadlines, from 2024/2026 to 2027/2029. For this type of change, we are obligated to evaluate whether changes in fact or law (including policy) change the basis for the prior approval, or provide a reason to change the prior evaluation/incorporate additional conditions or conditions to protect a new or different resource.

Here are quick facts about the project:

- 63 MW solar/battery facility, in Jefferson County, on 284 acres of EFU-zoned land; not yet built
- Interconnection to grid is proposed through an existing line traversing the site, resulting in 200 feet of new transmission line and point of interconnect
- Entire site considered Category 4 habitat (from prior evaluation in 2021) (exotic annual grassland, rabbitbrush shrub-steppe), based on having an ITP, otherwise would be considered Category 3
- Certificate holder is Madras PV1, LLC; parent company is Ecoplexus, Inc

We would like to propose a TEAMs call this week or next to discuss our questions on fish and wildlife habitat and T&E species and determine if ODFW has any other concerns. Please see the attached outline for details on the regulatory framework, the project, the amendment request, and our comments/questions for you.

Let me know if there is a date/time that works in the next week – I wouldn't expect for the discussion to take more than 30 minutes.

(Note – for meeting planning purposes, I don't think we need everyone on this email to attend the TEAMs call, but everyone is certainly welcome if you have time)

Thank you x 1 million!

Sarah T. Esterson
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From: MCVEIGH-WALKER Chase * ODOE <Chase.MCVEIGH-WALKER@energy.oregon.gov>
Sent: Friday, July 5, 2024 6:29 PM
To: BLEAKNEY Leann <lbleakney@nwcouncil.org>; CANE Jason * OSFM <Jason.Cane@osfm.oregon.gov>; MILLS David * OSFM <David.Mills@osfm.oregon.gov>; JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>; BROWN Jordan A * ODA <Jordan.A.BROWN@oda.oregon.gov>; Brandon.PIKE@ode.oregon.gov; THOMPSON Jeremy L * ODFW <Jeremy.L.THOMPSON@odfw.oregon.gov>; BOWLES Jamie L * ODFW <Jamie.L.BOWLES@odfw.oregon.gov>; TOKARCZYK John A * ODF <John.A.TOKARCZYK@odf.oregon.gov>; MCCLAUGHRY Jason * DGMI <Jason.MCCLAUGHRY@dogami.oregon.gov>; hilary.foote@dlcd.oregon.gov; JININGS Jon * DLCD <Jon.JININGS@dlcd.oregon.gov>; RYAN Peter * DSL <Peter.RYAN@dsl.oregon.gov>; EVANS Daniel * DSL <Daniel.EVANS@dsl.oregon.gov>; SALGADO Jessica * DSL <Jessica.SALGADO@dsl.oregon.gov>; RASHID Yassir * PUC <Yassir.RASHID@puc.oregon.gov>; CRUSE Martha * DEQ <Martha.Cruse@deq.oregon.gov>; CLEARANCE ORSHPO * OPRD <ORSHPO.Clearance@oprd.oregon.gov>; BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>; mlepin@cityofmadras.us; jtownsend@cityofmadras.us; metolius1205@gmail.com; joesmietana@gmail.com
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Subject: Email Summary of Public Notice of Receipt of Preliminary Request for Amendment 1 and Type B Review Request for Madras Solar Energy Facility Site Certificate

Good evening,

Below, please find the “Courtesy email” notification sent out Wednesday afternoon for the receipt of the Preliminary Request for Amendment 1 and Type B Review Request for the Madras Solar Energy Facility Site Certificate. I have also attached the Public Notice to this email.

The pRFA and the public notice are available to download and view from the Department's website at: https://www.oregon.gov/energy/facilities-safety/facilities/Pages/MSE.aspx

Thank you, and please do not hesitate to contact me with any questions.
-Chase

Chase McVeigh-Walker
Senior Siting Analyst
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From: Oregon Department of Energy <odoe@cd.energy.oregon.gov>
Sent: Wednesday, July 3, 2024 1:23 PM
To: ESTERSON Sarah * ODOE <sarah.esterson@energy.oregon.gov>
Subject: Email Summary of Public Notice of Receipt of Preliminary Request for Amendment 1 and Type B Review Request for Madras Solar Energy Facility Site Certificate

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OREGON DEPARTMENT OF ENERGY ENERGY FACILITY SITING COUNCIL

Email Summary of Public Notice of Receipt of Preliminary Request for Amendment 1 and Type B Review Request for Madras Solar Energy Facility Site Certificate

On June 25, 2024, the Department received preliminary Request for Amendment 1 to the Madras Solar Energy Facility Site Certificate (pRFA1), inclusive of a "Type B Review" Amendment Determination Request (Type B Review ADR).

The Madras Solar Energy Facility is an approved, but not yet constructed, solar photovoltaic energy generation facility with a nominal generating capacity of 63 MW and up to 63 MW of battery storage. Approved and not-yet-constructed related and supporting facilities include an electrical collection system, 34.5-kV to 230-kV step-up transformers, a substation, operations and maintenance enclosure, point of interconnection switching station, and a Battery Energy Storage System (BESS). The facility has a construction commencement deadline of June 25, 2024. The facility is located in Jefferson County, approximately 5 miles west of Madras.

Preliminary Request for Amendment 1 (pRFA1) seeks Council approval for a three year extension to the construction commencement and completion deadlines. This would change the construction commencement deadline from June 25, 2024 to June 25, 2027. The change would extend the deadline for completing construction to 18 months from the new construction start date. The pRFA1 also requests to change the parent company of the certificate holder from Ecoplexus Inc. to Fresh Air Power Development, LLC. The certificate holder will remain Madras PV1, LLC.

The certificate holder has requested a Type B review for this amendment request. A certificate holder can request Department determination of the Type B review process on an amendment request, but the certificate holder has the burden of justifying the appropriateness of the Type B review process through an evaluation of factors pursuant to OAR 345-027-0357(8). The Department is evaluating the Type B request and will issue a determination and post it to the project webpage.

The pRFA1 is available on the Department's website.

More Information, please contact Chase McVeigh-Walker, Senior Siting Analyst, at the phone, fax, email address, or mailing address listed below.

Chase McVeigh-Walker, Senior Siting Analyst
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Salem, OR 97301
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You received this notice either because you previously signed up for email updates related to specific siting projects, rulemakings, or all Energy Facility Siting Council activities. You will automatically receive all future notices unless you unsubscribe via ClickDimensions or by contacting ODOE.

If you have any questions or comments about ClickDimensions please feel free to contact ODOE's Administrative Assistant Nancy Hatch at 503-428-7905, toll-free in Oregon at 800-221-8035, or email to Nancy.Hatch@energy.oregon.gov

Oregon Department of Energy
Leading Oregon to a safe, equitable, clean, and sustainable energy future.

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.



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Attachment D: Draft Habitat Mitigation Plan

Madras Solar Energy Facility Habitat Mitigation Plan

November 2023

Madras PV1, LLC



Contents

1. Introduction **1**
2. Description of the Impacts Addressed by the Plan **1**
3. Mitigation **2**
3.1 Habitat Mitigation Area 2
3.2 Enhancement Actions 2
4. Description of the Mitigation Area **4**
5. Mitigation Area Pre Construction Requirements **4**
6. Legal Instrument **4**
7. Monitoring **5**
7.1 Monitoring Procedures 5
7.2 Success Criteria 6
8. Plan Amendment **6**

Appendices

A Figures
B Baseline Conditions Memorandum
C Site Photographs

Table

1 Permanent Disturbance by Habitat Category and Subtype within the Site Boundary 2

1. Introduction

This *Habitat Mitigation Plan* (Plan) defines the actions that Madras PV1, LLC (certificate holder) will follow to mitigate potential adverse impacts to wildlife habitat from the construction and operation of the Madras Solar Energy Facility (Facility).

The certificate holder will construct and operate the Facility in Jefferson County, Oregon. The Facility is proposed on approximately 280 acres of privately-owned land and will generate electricity using solar photovoltaic modules (also known as "panels") connected to inverters, transformers, and a substation. The existing Portland General Electric Pelton Dam to Round Butte 230-kilovolt transmission line crosses over the Facility site, and the Facility will interconnect into this existing transmission line within the Facility site boundary.

This Plan addresses mitigation for the permanent impacts of Facility components. The Facility site boundary encompasses portions of Sections 030 and 031 in Township 10 South and Range 13 East. The site is located on private land just east of Lake Simtustus, south and west of Willow Creek, and approximately 0.5 mile from the eastern boundary of the Warm Springs Reservation.

2. Description of the Impacts Addressed by the Plan

As described in Section P.3.2.3 of Exhibit P in the Application for Site Certificate, certificate holder biologists familiar with the Blue Mountains ecoregion, including its habitat types and wildlife, used a combination of historical land cover data, color aerial image interpretation, topographic maps, and onsite verification to characterize habitat types within the Facility site boundary from the perspective of wildlife use. Both general assemblages (for example, shrub-steppe obligates) and specific species of individual taxa (for example, special-status species) were examined.

During the October 9, 2018, field survey, a certificate holder biologist familiar with regional flora and fauna ground-truthed the habitat occurrence and quality. Habitat boundaries were delineated and distinct habitats were categorized according to the habitat definitions in the Oregon Department of Fish and Wildlife (ODFW) Fish and Wildlife Habitat Mitigation Policy (Oregon Administrative Rule [OAR] 635-415-0025), based on a combination of vegetative structure, habitat functionality, and overall ecological condition for wildlife, in particular for special-status species.

Approximately 277 acres of Category 4 habitat consisting of exotic annual grasslands and rabbitbrush shrub-steppe will be permanently occupied by Facility components (the "footprint"). Habitat Category 4 is an important habitat for fish and wildlife species, but not considered limited or essential [OAR 635-415-0025(4)]. The certificate holder has obtained an Incidental Eagle Take Permit (ITP) from the U.S. Fish and Wildlife Service to address potential disturbance of nesting eagles during construction. The ITP includes conservation measures that provide a net benefit to eagles by retrofitting power poles on other sites that are high risk to eagles. The actual areas of disturbance will be determined based on the final design layout of the Facility. The final design layout of the Facility has been provided to the Oregon Department of Energy (ODOE) and ODFW, along with the associated permanent impact acreages which are stated in this Plan.

The certificate holder commits to mitigating permanent impacts to Category 4 grassland and shrub-steppe habitat that cannot be avoided or minimized. Measures have been selected in consultation with ODOE and ODFW. Permanent impacts will be fully mitigated by including 1 acre in the mitigation area for every 1 acre of Category 4 habitat permanently impacted from the use, cover, or occupation of habitat by Facility components (1:1 acre mitigation ratio). Habitat impacts are summarized in Table 1.

This Plan is incorporated into the landowner's Conservation Easement. In addition, the landowner has agreed to limit livestock grazing to 10 head of cattle, 3 to 4 months a year. The landowner reports that

there has only been grazing on the HMA site for the past 5-6 years. In 2022, there were approximately 60 head of cattle on the site for 2 months of the year. In 2021, they had approximately 80 head of cattle on the site for 2 months of the year. And the three previous years they only had about 20 head of cattle on the site for 3-4 months.

Table 1. Permanent Disturbance by Habitat Category and Subtype within the Site Boundary

Habitat Category (per ODFW Designation)	Habitat Subtype	Permanently Disturbed (acres)
4	Grassland	147.84
	Shrub-steppe	129.09
	Subtotal	**276.93**
6	Gravel Roads	0.02
	Subtotal	**0.02**
Total		**276.95**

3. Mitigation

The mitigation goals for Category 4 habitat impacts require “no net loss of either habitat quantity or quality.” The certificate holder has selected measures in consultation with ODOE and ODFW which are consistent with ODFW Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0025). The certificate holder has identified a potential third party to implement the mitigation measures in this Plan. An agreement is in process with the Jefferson County Soil and Water Conservation District (SWCD) to act as the third party.

3.1 Habitat Mitigation Area

The certificate holder has secured a 280-acre habitat mitigation area (HMA) that is under a conservation easement with the landowners. The HMA is a private property owned by the same party as the Facility site. It is in the same home range and physiographic province (Blue Mountains ecoregion) as the Facility. The landowner will have unlimited access to the existing road that traverses the HMA in order to access the HMA and adjacent landowner lands.

The certificate holder through the agreement with the Jefferson County SWCD will arrange protection and enhancement of 1 acre for every 1 acre of Category 4 habitat that is permanently impacted (1:1 acre mitigation ratio) to meet the ODFW goal of “no net loss” for Category 4 habitat. The offsite HMA selected for the Facility is large enough to achieve the ODFW habitat mitigation goals and standards described in OAR 635-415-0025.

3.2 Enhancement Actions

To meet ODFW’s goal of “no net loss in habitat quantity or quality,” Jefferson County SWCD and the landowner will implement actions to protect habitat within the HMA from degradation and improve the habitat quality. These actions include the following:

- The landowner will ensure that development of dwellings and private roads within the HMA shall be restricted. The existing two-track road that traverses the HMA is not an impervious surface and will remain as it is.

- The SWCD will modify the perimeter fencing to both contain cattle and allow mule deer to access and exit to the HMA based on consultation with ODFW.
- The SWCD will remove all western juniper (*Juniperus occidentalis*) that occur within the HMA, and may treat stumps with herbicide. Juniper removal and thinning is consistent with the Oregon Conservation Strategy's recommended approaches for conservation of sagebrush habitats, which include controlling encroaching junipers by cutting all green limbs. They will monitor pre- and post-treatment conditions concurrent with monitoring described in Section 7 of this Plan. Any surviving juniper identified during monitoring in subsequent years will be removed and treated as needed within one calendar year.
- The SWCD will implement weed control for medusahead rye *(Taeniatherum caput-medusae*), Canada thistle (*Cirsium arvense*), Scotch thistle (*Onopordum acanthium*), and any other noxious weeds that occur within the HMA. The Oregon Department of Agriculture lists medusahead rye and Scotch thistle as Class B weeds, medusahead rye as a Class C weed, and Scotch thistle as a Class A weed. Control will be accomplished through use of herbicides targeted to medusahead rye and Scotch thistle. The herbicide is to be applied by a licensed applicator, using appropriate best management practices. Herbicide application for Scotch and Canada Thistles will occur during year 1 in the spring, and once a year thereafter during the spring (mid to late May), if necessary, until the weed has been controlled. Herbicide application for medusahead will occur during year 1 in the late summer/early fall using a pre-emergent herbicide that provides 1-3 years of control. Control of this weed will improve the quality of wildlife habitat in the HMA.
- If deemed necessary, the SWCD will reseed areas of bare ground and/or areas that lack species diversity in order to increase necessary herbaceous cover.

In addition to any other information that may be required by law, this Plan submitted to ODOE and ODFW includes the following:

- Description and map of the location of the HMA including monitoring reference sites and habitat types (Figures 1 and 2 in Appendix A).
- Description of protocols and methods, and a reporting schedule for monitoring the effectiveness of mitigation measures.
- Description of future modifications of mitigation measures if the goals and standards of OAR 635-415-0025 are not met within a reasonable time.

More specifically, the Plan contains the following mitigation plan performance measures:

- Success criteria: the mitigation plan clearly defines the methods to meet the mitigation goals and standards and list the criteria for measuring success.
- Annual review of mitigation goals and standards for the first 10 years of facility operation and every 3 years thereafter.
- Provisions for long-term protection and management of the site.
- A reporting schedule for identifying progress toward demonstrating consistency with the mitigation goals and standards and any modification of mitigation measures. Consistency with ODFW's mitigation goals and standards must be achieved annually for the first 10 years of facility operation to benefit the affected fish and wildlife species.

4. Description of the Mitigation Area

The HMA contains suitable habitat to achieve the ODFW goal of no net loss of Category 4 habitat. The subject parcel is located approximately 5 miles northeast of Ashwood, Oregon, and entirely within the Blue Mountains ecoregion (Figure 1). The HMA is private property owned by the same landowner as the Facility site. On April 2023, 280 acres of Category 4 shrub-steppe habitat was identified as available for conservation easement and enhancement (Figure 2). A professional biologist completed a baseline survey within the HMA on June 11, 2020, and a field survey on April 12, 2023 (Appendix B). A Jefferson County SWCD employee conducted a field survey in the summer of 2023 to assess and confirm habitat conditions and document existing noxious weeds and junipers. The entire parcel is a gently rolling, shrub-steppe habitat dominated by sheep Fescue perennial bunchgrass, low-density Phase 1 juniper trees, and small areas with noxious weeds. An unnamed, ephemeral tributary of Trout Creek traverses the parcel from southeast to northwest. Wetland vegetation occurs along portions of the creek. Current land use includes moderate cattle grazing.

Shrub-steppe habitat that occurs within the parcel is important to wildlife because native shrubs and grasses are dominant and this habitat type contributes to sustaining wildlife populations. Several Oregon Conservation Strategy species are associated with native shrub-steppe habitats in the Blue Mountains ecoregion. Wetlands and streams within the parcel are essential habitat for some wildlife species that rely on green vegetation year-round and are considered limited habitats within the arid portions of the Blue Mountains ecoregion. Fencing will be designed to keep limited numbers of cattle in and allow safe entry and exit for mule deer. Juniper removal within the parcel will increase the amount of sunlight, moisture, and nutrients available for shrubs and forbs used by wildlife, including mule deer.

5. Mitigation Area Pre Construction Requirements

Prior to construction of the Facility, the certificate holder shall complete the following steps:

1) HMA Habitat Assessment: Certificate holder has conducted a desktop review and field survey of the HMA, as determined appropriate by ODOE, and in consultation with ODFW. Certificate holder describes baseline conditions in Section 4 and Appendix B of this Plan. Figure 2 identifies the habitat subtype/vegetation characteristics of all acreage within the HMA, including noxious weeds.
2) Enhancement Action Review: Following review of the HMA Habitat Assessment, the certificate holder received input from ODOE and ODFW on enhancement action opportunities at the HMA. Enhancement actions were based on review of the HMA Habitat Assessment and HMA site visits conducted by the certificate holder, ODOE, and ODFW. Section 3.2 of this Plan includes a detailed description of final enhancement actions to be implemented and monitored at the HMA.
3) Success Criteria: The certificate holder proposes, for ODOE and ODFW review and approval, success criteria appropriate for tracking the success of enhancement actions to be implemented and monitored at the HMA (Section 7.2 of this Plan).
4) Prior to construction of the Facility, the certificate holder will acquire the legal right to create, maintain, and protect the HMA for the life of the Facility by means of a conservation easement and will provide a copy of the documentation to ODFW and ODOE. The legal instrument shall, at a minimum, adhere to the requirements outlined in Section 5 of this Plan.

6. Legal Instrument

Certificate holder has entered into a conservation easement with the landowner on February 28th 2023. This plan will be incorporated into the conservation easement.

7. Monitoring

The following sections outline examples of typical monitoring procedures and success criteria that will be implemented in the HMA, either by a designated third party or directly by the certificate holder.

7.1 Monitoring Procedures

Jefferson County SWCD or other contracted third party will protect, enhance, and maintain the HMA for the useful life of the Facility or duration of impacts (including reclamation), whichever is greater.

Monitoring of the HMA will be conducted by a qualified investigator (e.g., independent botanist, wildlife biologist, or revegetation specialist) to ensure that final Plan mitigation goals and standards are achieved for the duration of Facility operation, as necessary, to benefit the affected fish, wildlife, and plant species. The investigator will evaluate habitat conditions and the results of any enhancement actions. Monitoring will occur annually. The contracted third party will submit an annual memorandum with photo-documentation summarizing conditions and enhancement actions at the HMA.

The certificate holder has documented these sites to establish baseline conditions as they relate to the success criteria. Documentation of baseline conditions at reference sites was conducted using photo-documentation (Appendix C). The contracted third party will monitor changes in native vegetation cover (e.g., species and structural stage) and progress toward meeting the success criteria in HMA enhancement areas in compliance with terms of the Plan (i.e., restricted uses are not occurring on the property such as unauthorized grazing practices, off-highway vehicle trespassing, and construction of dwellings or fences). Reference sites were identified, in consultation with ODFW, near the enhancement areas to represent pre-enhancement conditions. Seven reference sites were identified that closely resemble the pre-enhancement characteristics of the identified enhancement areas.

The reference sites shall remain in the same location unless approval for use of a differing reference site is obtained by ODOE in consultation with ODFW. Figure 2 is a map presenting the pre-enhancement habitat category/vegetation characteristics and latitude and longitude of the reference sites. Jefferson County SWCD will complete the photo documentation for the seventh reference site prior to enhancement actions.

In addition, the investigator may monitor the following conditions:

1) Annually record environmental factors (such as precipitation at the time of surveys and precipitation levels for the year).
2) Annually record any wildfires that occur within the mitigation area and any remedial action taken to restore habitat quality in the damaged area.
3) Annually assess the success of any weed control programs and recommend remedial action, if needed.
4) Assess the recovery of vegetation resulting from any removal or reduction of livestock grazing or post-fire recovery by comparing the quality of vegetation cover at the time of each monitoring visit with the quality observed in previous monitoring visits and as observed when the mitigation area was first established. The investigator would determine the extent of successful recovery of native vegetation based on measurable indicators (such as structural growth and signs of more abundant seed production) and would report on the progress of recovery within the HMA.
5) Annually evaluate the condition of wildlife-friendly fencing installed around the HMA to determine if new fencing or repairs are needed for successful habitat protection.

The contracted third party will report its findings and recommendations regarding the monitoring of the HMA to ODOE and ODFW, annually. The report will describe the habitat mitigation actions carried out within the HMA during the reporting year.

If the certificate holder cannot demonstrate that the HMA is trending toward meeting the final Plan goals and standards within 5 years after the date construction of the Facility begins, then remedial action will be proposed. ODOE may require corrective measures, which could include replanting the HMA.

The contracted third party will report the investigator's findings and recommendations regarding the monitoring of the mitigation area to ODOE and ODFW annually. In the mitigation area report, the qualified investigator will describe all habitat mitigation actions carried out during the reporting time period. The mitigation area report may be included as part of other reporting on the Facility that will be required by the site certificate.

7.2 Success Criteria

Mitigation of the permanent habitat impacts of the Facility may be considered successful if sufficient habitat is protected or enhanced within the mitigation area to meet the ODFW goal of no net loss of Category 4 habitat for the duration of Facility operation. The certificate holder or third party may demonstrate success based on evidence that the habitat quality at the HMA has not degraded compared to baseline conditions and enhancement actions consistently met the success criteria. If the quality of the HMA habitat has degraded from baseline conditions, as determined during regular monitoring or at any time the certificate holder or third party becomes aware of degradation, they shall describe why the maintenance actions were not effective and then propose and implement remedial action. Success criteria will be implemented prior to ground-disturbing activities, and in consultation with ODOE and ODFW, as described in Section 5, Step 3 of the Plan. The mitigation measures, as presented in this Plan, ensure that the Facility's permanent impacts will not result in a net loss of habitat quantity or quality and result in a net benefit of habitat quality because the mitigation area includes acreage for permanent impacts. The certificate holder will protect the quantity and quality of habitat within the HMA area for the life of the Facility. Measuring success of the Plan at the HMA will include or be based on the following indicators:

- Increase in herbaceous cover (shrubs, forbes, and perennial grasses) within the HMA using photo documentation at reference sites.
- Maintenance of efforts to control and limit juniper encroachment or overstory.
- Response of rabbitbrush and other shrubs.
- Successful weed control (weed monitoring and treatment) within the HMA.

The certificate holder or third party will protect a sufficient quantity of habitat to meet the HMA requirements (1:1 acre mitigation ratio) based on the final configuration of the Facility. If the certificate holder or third party cannot demonstrate that the HMA is trending toward the habitat quality goals within 5 years, the certificate holder or third party will propose and implement remedial action. ODOE may require additional corrective measures.

8. Plan Amendment

This Plan may be amended from time to time by agreement of the certificate holder and the Oregon Energy Facility Siting Council (EFSC) or ODOE, acting within its delegated authority of EFSC. Such amendments may be made without amendment of the site certificate. EFSC authorizes ODOE to agree to

amendments to this Plan. ODOE will notify EFSC of all amendments, and EFSC retains the authority to approve, reject, or modify any amendment of this Plan agreed to by ODOE.

Appendix A
Figures

121°10'W 121°0'W 120°50'W 120°40'W

44°50'N

44°40'N

44°30'N

T07S R12E T07S R13E T07S R14E T07S R15E T07S R16E T07S R17E T07S R18E

T08S R12E T08S R13E T08S R14E T08S R15E T08S R16E T08S R17E T08S R18E

T09S R12E T09S R13E T09S R14E T09S R15E T09S R16E T09S R17E T09S R18E

T10S R12E T10S R12.5E T10S R13E T10S R14E T10S R15E T10S R16E T10S R17E T10S R18E

T11S R12E T11S R13E T11S R14E T11S R15E T11S R16E T11S R17E T11S R18E

T12S R12E T12S R13E T12S R14E T12S R15E T12S R16E T12S R17E T12S R18E

Blue Mountains

Columbia Plateau

WASCO COUNTY

JEFFERSON COUNTY

CROOK COUNTY

97 26 293 218

Ashwood

Madras

Madras City County Airport

Deschutes River

Lake Billy Chinook

SW Belmont Ln SW Cem Ln SW Tris Ln NW Ch Dr NW Fir Ln NE Park Ln

VICINITY MAP



LEGEND

- Madras Solar Energy Facility Site Boundary
- Proposed Habitat Mitigation Area 44.759641, -120.651262
- US Level III Ecoregion
- County Boundary
- City of Madras City Limits
- Location of Ashwood, Oregon
- Township Range
- Section

Section Numbering

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

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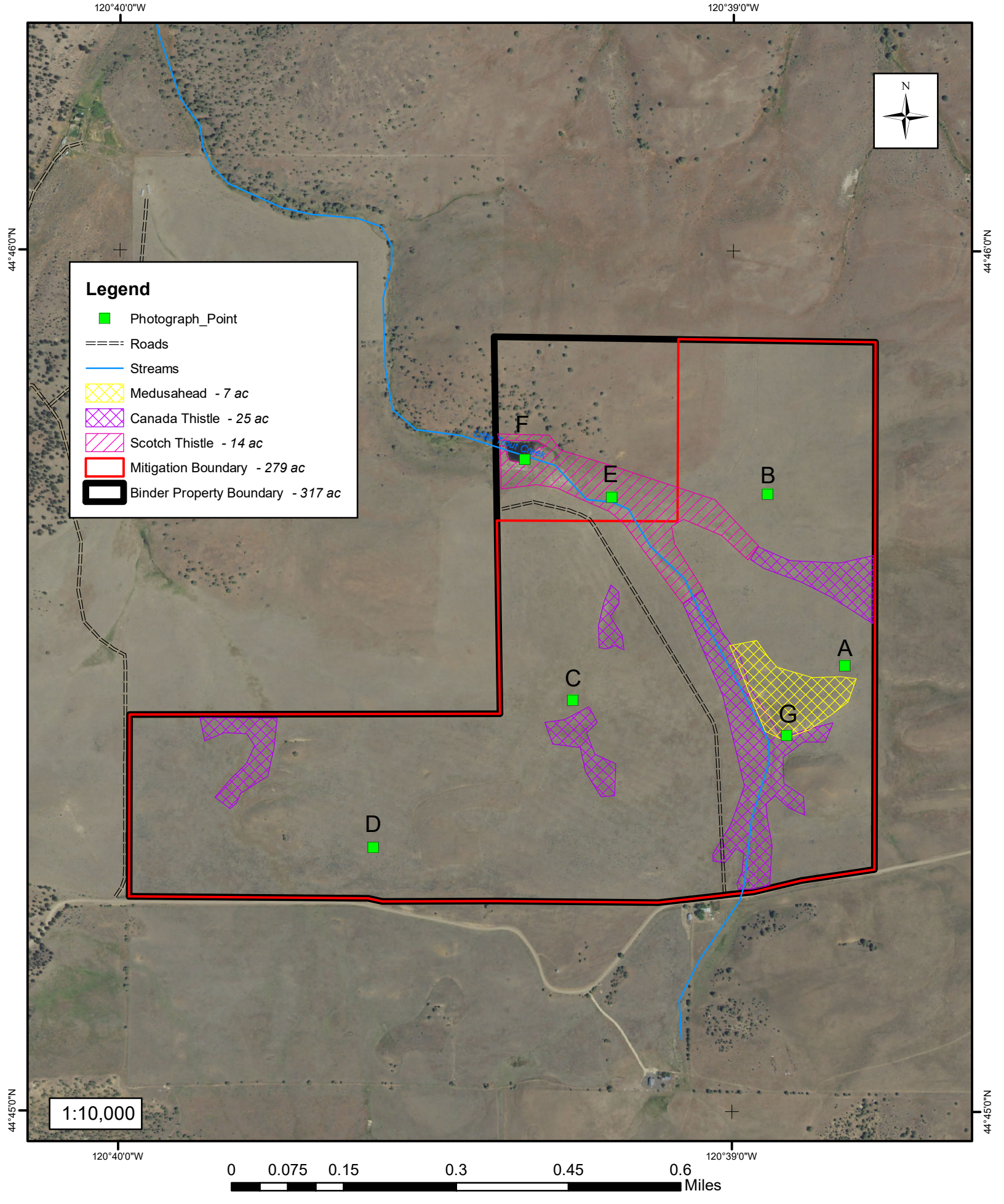
1 inch equals 3 miles

Figure 1
Proposed Habitat Mitigation Area
Madras Solar Energy Facility
Jefferson County, OR

JACOBS

\\DC1VS01\GISPROJ\E\ECOPLEXUS\MADRASSOLARPROJECT\MAPS\REPORT\2020\MITIGATION_AREA_200610.MXD KGRANT1 7/10/2020 3:04:55 PM

Figure 2. Madras Solar Energy Facility Habitat Mitigation Area (HMA)



Appendix B
Baseline Conditions Memorandum

Jacobs

Memorandum

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Subject	**Baseline Conditions in the Habitat Mitigation Area**
Project Name	Madras Solar Energy Facility
Attention	Rosalie Annand/Ecoplexus, Inc.
From	Forrest Parsons/Jacobs Engineering Group Inc.
Date	September 29, 2023

This memorandum documents baseline conditions in the Madras Solar Energy Facility Habitat Mitigation Area (HMA).

Before conducting a site visit at the HMA, Jacobs conducted a desktop review using readily available public information from websites, online databases, and regulatory documents. The review focused on wildlife and habitat data obtained from the U.S. Fish and Wildlife *National Wetlands Inventory*, Oregon Department of Fish and Wildlife Compass Online Database, and recent aerial imagery.

A reconnaissance survey was initially conducted on June 11, 2020, to assess general habitat conditions and to photograph the HMA from the road. A joint site visit with Ecoplexus, the Oregon Department of Energy, and the Oregon Department of Fish and Wildlife (ODFW) was conducted on April 12, 2023, to discuss potential mitigation actions at the HMA. Following the discussion, baseline conditions were documented by Jacobs senior wildlife biologist, Forrest Parsons. Baseline conditions were documented by walking meandering transects throughout the HMA. Habitat conditions were documented by taking photographs in cardinal directions (north, east, south, west) at six reference sites inside the HMA that were representative of habitat conditions. A qualified Jefferson County U.S. Department of Agriculture Soil and Water Conservation District employee also conducted a field survey on July 25, 2023, to assess habitat conditions by documenting and mapping existing noxious weeds, weed population, and the extent of western juniper trees within the HMA.

The HMA is located approximately 5 miles northeast of Ashwood, Oregon, and entirely within the Blue Mountains ecoregion. The HMA is ODFW Category 4 gently rolling, low shrub shrub-steppe habitat dominated by rabbitbrush, native bunchgrasses, widely scattered low-density Phase 1 juniper trees, and areas of noxious weeds that include Canada thistle, Scotch thistle, and medusahead. An ODFW Category 2 unnamed, ephemeral tributary of Trout Creek generally traverses the parcel from southeast to northwest. Wetland vegetation occurs along portions of the creek indicating shallow groundwater. Wildlife observed within the HMA included common passerines such as horned lark and white-crowned sparrow. Pronghorn antelope were also observed within the HMA. Evidence of light to moderate grazing was observed throughout the HMA and primarily concentrated along the tributary of Trout Creek.

Appendix C
Site Photographs

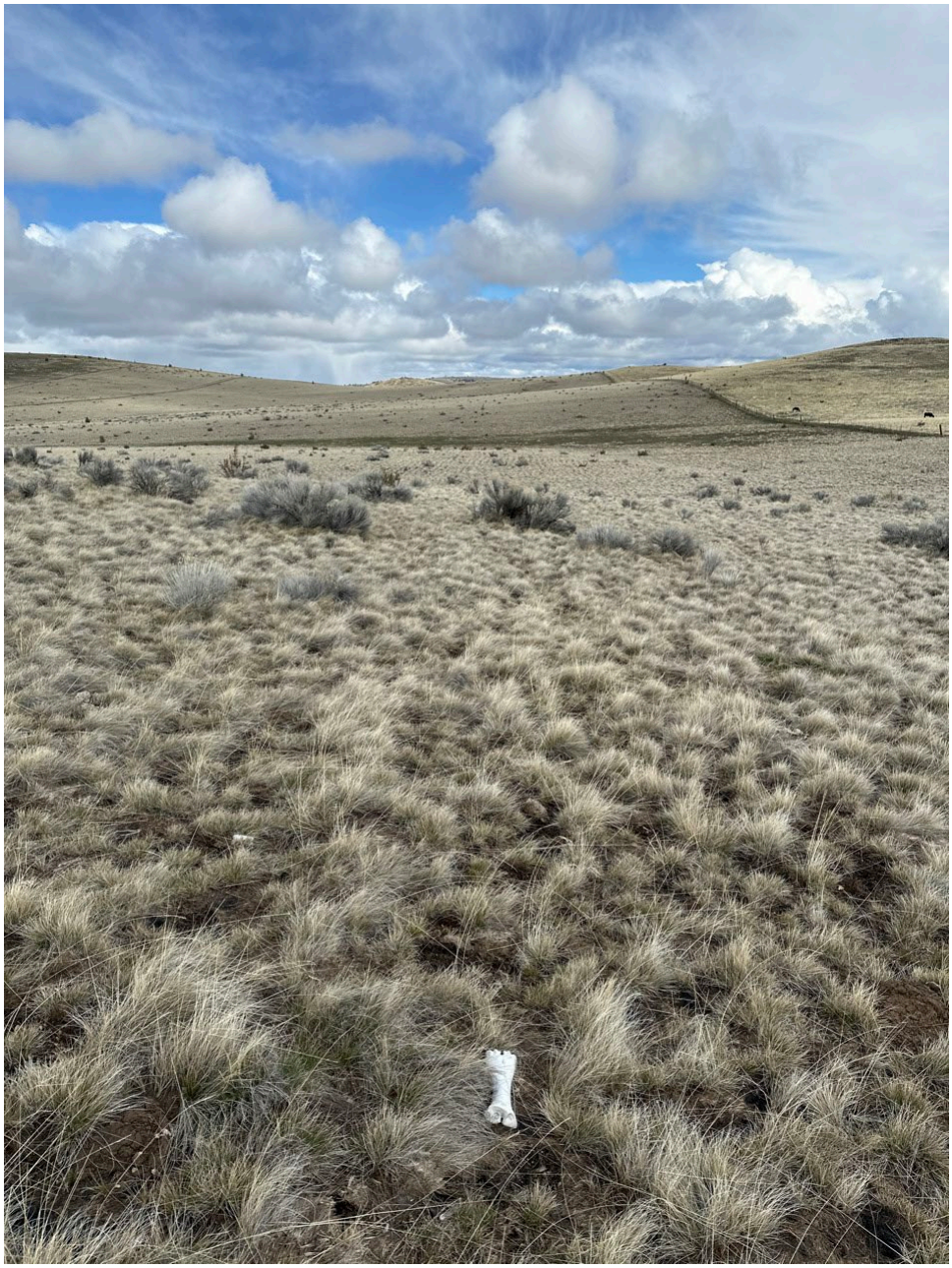
Jacobs

Appendix C
Site Photographs

Project Title	**Madras Solar Energy Facility Habitat Mitigation Plan**
Location	Jefferson County, Oregon
Submittal Date	October 2023
Date Photos Taken	April 12, 2023



Photograph 1: Reference Point A Facing East



Photograph 2: Reference Point A Facing North



Photograph 3: Reference Point A Facing South



Photograph 4: Reference Point A Facing West



Photograph 5: Reference Point B Facing East



Photograph 6: Reference Point B Facing North



Photograph 7: Reference Point B Facing South



Photograph 8: Reference Point B Facing West



Photograph 9: Reference Point C Facing East



Photograph 10: Reference Point C Facing North



Photograph 11: Reference Point C Facing South



Photograph 12: Reference Point C Facing West



Photograph 13: Reference Point D Facing East



Photograph 14: Reference Point D Facing North



Photograph 15: Reference Point D Facing South



Photograph 16: Reference Point D Facing West



Photograph 17: Reference Point E Facing East



Photograph 18: Reference Point E Facing North



Photograph 19: Reference Point E Facing South



Photograph 20: Reference Point E Facing West



Photograph 21: Reference Point F Facing East



Photograph 22: Reference Point F Facing North



Photograph 23: Reference Point F Facing South



Photograph 24: Reference Point F Facing West

***Reference Point G photo documentation will occur prior to any enhancement actions**

Attachment E: Draft Noxious Weed Control Plan

JACOBS

Madras Solar Energy Facility

Noxious Weed Control Plan for Madras Solar Energy Facility in Jefferson County, Oregon

November 2019

Madras PV1, LLC

Amended by Department in October 2024

Madras Solar Energy Facility

Project No:	709202CH
Document Title:	Noxious Weed Control Plan for Madras Solar Energy Facility in Jefferson County, Oregon
Document No.:	GES0923191628PDX
Date:	November 2019
Client Name:	Madras PV1, LLC
Project Manager:	Paul Seilo/Jacobs
Author:	Peggy O'Neill/Jacobs

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Contents

Acronyms and Abbreviations ..... **iv**

1. Introduction **1**
1.1 Background Information 1
1.2 Weed Control Goals 1

2. Weed Species of Concern **1**

3. Weed Control Plan **4**
3.1 Overview 4
3.2 Best Management Practices 4
3.3 Treatment of Disturbed Areas 5

4. Monitoring **5**

5. References **5**

Table

1 Noxious Weed Species Potentially Occurring in the Vicinity of the Facility Site Boundary 2

Acronyms and Abbreviations

Applicant	Madras PV 1, LLC
Facility	Madras Solar Energy Facility
ODA	Oregon Department of Agriculture
Plan	Noxious Weed Control Plan

1. Introduction

The purpose of this Noxious Weed Control Plan (Plan) is to provide clear measures to prevent, control, and mitigate the introduction or spread of designated noxious weeds within the Madras Solar Energy Facility (Facility) area during and following construction of the Facility. Madras PV 1, LLC (Applicant) and its contractors will be responsible for implementing the measures described in this Plan. This Plan is applicable to the preconstruction, construction, and future retirement and restoration phases of the Facility major components and related or supporting facilities, yards, access roads, or staging areas.

Noxious weed control measures described in this plan have been developed in consultation with the following sources or agency contacts:

- Oregon Department of Agriculture (ODA) – Noxious Weed Control Program
- Jefferson County Weed Control Program

The measures described in this Plan are designed to prevent the introduction of new noxious weed species to the Facility area and to control existing populations of noxious weeds. Existing populations should be prevented from growing in size and density and should not be allowed to spread to new sites. Where possible and feasible, existing populations of noxious weeds should be eradicated. Weed prevention and control measures should be implemented in all Facility areas. In addition, if it is determined that noxious weeds have invaded areas immediately adjacent to Facility areas (e.g., areas visible just beyond the Facility site boundary or along access roads) as a result of construction, the Applicant would contact the landowner and seek approval to treat those weed populations.

1.1 Background Information

The Jefferson County Weed Department works to keep noxious weeds at a minimum on roadways and throughout the county, assists area landowners with land maintenance needs, and follows the ODA noxious weed policy and classification system as part of ODA's Noxious Weed Control Program (ODA, 2019). Noxious weeds are identified on the State of Oregon noxious weed list and mapped by ODA as occurring in Jefferson County. "A" listed weeds are economically important, non-native species with limited distribution in the county. "B" listed weeds are economically important, non-native species that are regionally abundant. At the County level, eradication is required for "A" listed weeds at an intensive level, with containment being the goal for "B" listed weeds. "T" listed weeds are a designated group of weed species that are selected and will be the focus for prevention and control by the Noxious Weed Control Program. Action against these weeds will receive priority.

For the purposes of this weed control plan, the term "weed" refers to any species on the Jefferson County weed list regardless of its status. Noxious weeds may be present within the site boundary, and construction activities could spread these weeds. This plan outlines the measures the Applicant will implement to control weeds within areas disturbed by Facility construction and operation. The Facility will temporarily disturb approximately 5.56 acres of Category 4 Grassland habitat and approximately 1.10 acres of Category 4 Shrub-steppe habitat during Facility construction. Temporarily disturbed areas will be revegetated as described in the site *Revegetation Plan* (ODOE, 2019).

1.2 Weed Control Goals

Weed species can adversely affect the structure and composition, and therefore the inherent values of the revegetation and habitat mitigation areas. Overarching goals of post-construction operations are prevention, identification, and control of weeds. Guidance and best management practices to accomplish these goals are provided in Section 3.

2. Weed Species of Concern

Noxious weeds are opportunistic and often nonindigenous plant species that readily colonize disturbed areas and can prevent or inhibit native plant species from reestablishing. Many invasive weeds have significant adverse effects on agricultural operations and on natural resources, including soil and water,

natural vegetation communities, and wildlife habitat. Designated noxious weeds are those invasive weed species that are of elevated economic or environmental concern to the State of Oregon or local jurisdictions and receive priority during weed management planning and operations. The ODA lists 44 Class A species and 93 Class B species for 2019, class A being the highest priority. In addition, ODA lists 44 of these Class A and B species as Target species for focused management efforts (ODA, 2019). Jefferson County specifically recognizes 24 Class A, 21 Class B, and 8 Class C species of noxious weeds (Jefferson County, 2019). Class C indicates that species eradication is not likely and the species needs control.

Table 1 lists designated noxious weeds that have been identified and documented in Jefferson County.

Table 1. Noxious Weed Species Potentially Occurring in the Vicinity of the Facility Site Boundary

Madras Solar Energy Facility, Jefferson County, Oregon

Common Name	Scientific Name	State Weed Designation[a]	County Weed Designation[b]
Buffalobur	*Solanun rostratum*	B	A
Canada Thistle	*Cirsium arvense*	B	B
Canadian or Perennial Goldenrod	*Solidago canadensis*		B
Catchweed bedstraw	*Galium aparine*		B
Common Groundsel	*Senecio vulgaris*		B
Common Mullein	*Verbascum thapsus*		C
Common St. Johnswort	*Hypericum perforatum*	B	C
Common purslane			C
Curly Dock	*Rumex crispus*		B
Dalmation Toadflax	*Linaria dalmatica*	B, T	A
Diffuse Knapweed	*Centaurea diffusa*	B	B
Eurasian Watermilfoil	*Myriophyllum spicatum*	B	A
Field Bindweed	*Convolvulus arvensis*	B, T	B
False brome			A
Field dodder	*Cuscuta campestris*	B	B
Field morningglory			B
Flixweed	*Descurainia sophia*		B
~~Henbit~~Hembit	*Lamium amplexicaule*		C
Iberian Starthistle	*Centaurea iberica*	A, T	A
Japanese Knotweed	*Polygonum cuspidatum*	B	A
Jointed Goatgrass	*Aegilops cylindrica*	B	A
Kochia	*Kochia scoparia*	B	B
Leafy Spurge	*Euphorbia esula*	B, T	A
Marestail	*Conyza canadensis*		B
Meadow Knapweed	*Centaurea debeauxii*	B	A
Mediterranean sage	*Salvia aethiopis*	B	A
Medusahead	*Taeniatherum caput-medusae*	B	C
Musk Thistle	*Carduus nutans*	B	A
Myrtle Spurge	*Euporbia myrsinites*	B	B
Perennial Pepperweed	*Lepidium latifolium*	B,T	A

Puncturevine	*Tribulus terrestris*	B	B
Purple Loosestrife	*Lythrum salicaria*	B	A

Table 1. Noxious Weed Species Potentially Occurring in the Vicinity of the Facility Site Boundary

Madras Solar Energy Facility, Jefferson County, Oregon

Common Name	Scientific Name	State Weed Designation[a]	County Weed Designation[b]
Purple Mustard	*Choripora tenella*		C
Purple starthistle	*Centaurea calcitrapa*	A, T	A
Quack Grass	*Elymus repens*		B
Rattail Fescue	*Vulpia myuros*		C
Ribbongrass[1]	*Phalaris arundinaceae var. picta*	B, T	A
Rush Skeletonweed	*Chondrilla juncea*	B, T	A
Russian Knapweed[4]	*Acroptilon repens*	B	B
Russian Thistle	*Salsola tragus*		B
Scotch Broom	*Cytisus scoparius*	B	A
Scotch Thistle	*Onopordum acanthium*	B	A
Slender false brome[1]	*Brachypodium sylvaticum*	B	A
Spotted Knapweed	*Centaurea stoebe ssp. micranthos*	B, T	A
~~Squarrosa~~ Squarrose Knapweed	*Centaurea virgata ssp. squarrosa*	A, T	A
Tansy Ragwort	*Senecio jacobaea*	B, T	A
Tumble Mustard	*Sisymbrium altissimum*		B
Ventanata[2]	*Ventenata dubia*		A, B
Whitetop			B
Water hemlock	*Cicuta douglasii*		B
Western salsify	*Tragopogon dubius*		B, C
White Top	*Cardaria draba*	B	B
Wild Carrot	*Daucus carota*		A
Wild Oats	*Avenua fatua*		C
Yellow flag iris[3]	*Iris pseudacrorus*	B	A, B
Yellow Starthistle	*Centaurea solstitialis*	B	A
Yellow Sweet Clover[5]	*Melilotus officinalis*		C

[a] ODA, 2019

A-List - A weed of known economic importance which occurs in the state in small enough infestations to make eradication or containment possible; or is not known to occur, but its presence in neighboring states make future occurrence in Oregon seem imminent. Recommended action: Infestations are subject to eradication or intensive control when and where found.

B-List - A weed of economic importance which is regionally abundant, but which may have limited distribution in some counties. Recommended action: Limited to intensive control at the state, county or regional level as determined on a site specific, case-by-case basis. Where implementation of a fully integrated statewide management plan is not feasible, biological control (when available) shall be the primary control method.

T-List - A designated group of weed species that are selected and will be the focus for prevention and control by the Noxious Weed Control Program. Action against these weeds will receive priority. T-designated noxious weeds are determined by the Oregon State Weed Board, which directs ODA to develop and implement a statewide management plan. T-designated noxious weeds are species selected from either the A or B list.

[b] Jefferson County, 2019

A-List - Highest priority for eradication
B-List - Found in abundance, need to be localized

Table 1. Noxious Weed Species Potentially Occurring in the Vicinity of the Facility Site Boundary

Madras Solar Energy Facility, Jefferson County, Oregon

Common Name	Scientific Name	State Weed Designation[a]	County Weed Designation[b]
C-List - Eradication not likely, needs control			

[1] False brome and ribbongrass are A-rated weeds outside an ornamental site.
[2] Ventenata is an A-rated weed within the North Unit Irrigation Boundary.
[3] Yellow flag iris is an A-rated weed when north of Haystack Reservoir and Round Butte Dam.
[4] A-rated weed when found north of Madras, west of Highway 26.
[5] Yellow sweetclover is only a noxious weed when on the road right-of-way.

3. Weed Control Plan

3.1 Overview

Long-term weed control will be accomplished through the seeding of perennial grasses known to compete well with noxious weeds, such as thickspike wheatgrass (*Elymus lanceolatus*) and Sherman big bluegrass (*Poa secunda*), or by maintaining the existing cover in the buffers. Short-term weed control will be through herbicide use. However, it will be important to ensure that the short-term herbicide use does not affect the establishment of the perennial grass cover intended to provide long-term control. Early detection and management of small populations before they can expand into larger populations is extremely important for successful control.

Weed control will continue until the disturbed areas meet the success criteria described above with respect to the designated reference sites. Supplemental seeding may be needed to achieve this goal. Subsequent fertilizer application will be limited in areas treated for weeds, and the timing of the seeding will need to be coordinated with any herbicide applications.

The herbicides used and the timing of application will differ depending on whether the species are (1) perennial, broad-leaved, or dicot weeds (knapweeds and thistles, field bindweed, whitetop), or (2) annual grasses or monocots (goatgrass and medusahead). Appropriate herbicides differ substantially between dicots and monocots.

3.2 Best Management Practices

The Applicant will implement best management practices during Facility construction and operation to help prevent the invasion and spread of noxious weeds onsite. These may include the following:

- Information regarding target weed species will be provided at the operations and maintenance enclosure.
- Weed prevention and control measures, including Facility inspection and documentation, will be included in operations plans.
- Temporary ground-disturbing operations in weed-infested areas will be inspected and documented in accordance with Facility monitoring plan (see Section 4 Monitoring).
- Vehicles and equipment will be cleaned prior to entry into revegetation areas to help minimize introduction of noxious weed seeds to the site.
- To prevent conditions favoring weed establishment, temporarily disturbed areas will be revegetated as soon as possible.
- The site will be revegetated with appropriate, locally-collected native seed or native plants; when these are not available, noninvasive and nonpersistent non-native species may be used.

Seed and straw mulch to be used for site rehabilitation will be inspected and certified free of weed seed and propagules.

3.3 Treatment of Disturbed Areas

Before the initial weed treatment begins, the herbicide applicator personnel will meet with a botanist for a ½-day session to review the target species and their identification and to identify native species to be avoided, such as the native thistle (*Cirsium undulatum*) onsite. Following the initial meeting between the botanist and herbicide applicators, the applicators will be responsible for identifying and treating the target species.

Control will be accomplished through use of herbicides targeted to the individual weed species. The herbicide is to be applied by a licensed applicator, using appropriate best management practices. Herbicide application will occur twice in year 1, in the spring (knapweeds, thistles, bindweed) and fall (other species), and once a year thereafter during the spring (mid to late May), if necessary, until the success criteria are met. Herbicide will be applied with a spreader sticker surfactant (e.g., Dynamic Green Concepts, Phase). Rush skeletonweed will be treated throughout the growing season as it occurs. Information on identification of this and other target weed species will be included in the environmental training materials to be provided to Facility operations staff. If rush skeletonweed is observed during routine operations activities at any time during the growing season, the licensed applicator will be contacted to treat this species as soon after it is observed as practicable. Tables 3 and 4 in the *Revegetation Plan* (ODOE, 2019) provides a summary of recommended treatment by target species.

4. Monitoring

Monitoring will be conducted on an annual basis by a qualified botanist for the first 5 years following initial seeding to assess weed growth and to recommend weed control measures. The weed monitoring will consist of two general components:

- Site survey to identify weed species that have established within the disturbed areas
- Inspections of treated areas to assess the success of the weed treatments

The site survey will be a pedestrian survey of disturbed areas in mid to late May. The survey will be scheduled to be initiated slightly before the herbicide application to identify any weed species. The focus will be on weed species observed prior to construction on the site (knapweed, starthistle, field bindweed, whitetop, jointed goatgrass, medusahead rye), as well as any other species on the Jefferson County weed list that might require different control methods.

The results of the site survey will be summarized in a short memorandum in which (1) any new weed species observed and treatment protocols are identified, (2) the location and weed species within the buffers are described, and (3) reference plot cover values are listed.

Subsequent monitoring results will be summarized in short memorandums in which the treatment success is described, any recommendations to improve treatment success (if necessary) are made, and any new weed species or emergence are noted.

5. References

Jefferson County. 2019. *Jefferson County Weed Control Ordinance. Ordinance No. 0-091-12.* Jefferson County, Oregon. https://www.jeffco.net/publicworks/page/jefferson-county-weed-control-ordinance.

Oregon Department of Agriculture (ODA). 2019. *Noxious Weed Policy and Classification System.* Noxious Weed Control Program, Salem, Oregon. February. http://www.oregon.gov/ODA/shared/Documents/Publications/Weeds/NoxiousWeedPolicyClassification.pdf.

Oregon Department of Energy (ODOE). 2019. *Madras Solar Energy Facility: Revegetation Plan.* December.

Attachment F-1: Draft Construction Wildfire Mitigation Plan

Attachment F.1. Draft Construction Wildfire Mitigation Plan

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Madras Solar Energy Facility

Draft Construction Wildfire Mitigation Plan

Madras Solar Energy Facility
June 2024

Prepared for

Madras PV1, LLC

600 Park Offices Drive, Ste. 285

Durham, NC, 27709

Prepared by



Tetra Tech, Inc.

Amended by Department October 2024

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Table of Contents

Attachment V-1. Draft Construction Wildfire Mitigation Plan 1

1 Finalization and Pre-Construction Tasks 1

1.1 Finalizing Tasks in this Plan Prior To Construction (PRE): 1

1.2 Prior To Construction Tasks (PRE) 3

2 Construction (CON) Wildfire Risk Minimization Tasks and Procedures 4

2.1 Wildfire Risk Assessment 5

2.2 Inspection and Management 5

2.2.1 Vegetation/Defensible Space Management, and Ignition Source BMPs .6~~5~~

2.3 Preventative and Minimization Actions for Wildfire Risk ..... 7~~6~~

2.3.1 Preventative Actions: Construction Facility Design and Maintenance 7

2.3.2 Preventative Programs 7

3.0 Plan Updates 10

4.0 References 10

Acronyms and Abbreviations

Certificate Holder	Madras PV1 LLC
CFR	Code of Federal Regulations
CWPP	Community Wildfire Protection Plan
EMP	Emergency Management Plan
Facility	Madras Solar Energy Facility
NHMP	Jefferson County Multi-Jurisdictional Natural Hazards Mitigation Plan
OAR	Oregon Administrative Rules
Plan	Construction Wildfire Mitigation Plan

1 Finalization and Pre-Construction Tasks

This Construction Wildfire Mitigation Plan (Plan) was prepared to meet the submittal requirements in Oregon Administrative Rule (OAR) 345-021-0010(1)(v), including providing evidence that the Madras Solar Energy Facility (Facility) complies with the approval standard in OAR 345-022-0115.

Section 1.0 of this plan includes measures to be completed to finalize the final Construction Wildfire Mitigation Plan (WMP). Items in Section 1.1. must be included in the final plan and Section 1.2 are actions that must be completed and documented prior to construction.

1.1 Finalizing Tasks in this Plan Prior To Construction (PRE):

A Construction WMP Finalization Compliance Checklist that identifies the following action items ~~is~~ will be included as~~t~~ Attachment 1 to this plan.

To finalize this Plan prior to construction, the certificate holder shall:

A. Prior to construction of the Facility, provide a summary update of wildfire risk at the site as designated under OAR 345-022-0115, if significantly different from Final Order on Amendment 1.

B. Incorporate guidance outlined in the wildfire annex of the Jefferson County Multi-Jurisdictional Natural Hazard Mitigation Plan (NHMP; Jefferson County 2022a), which is the Jefferson County Community Wildfire Protection Plan (CWPP; Jefferson County 2022b).
   i. Identify what provisions of these plans are applicable to Facility construction.

C. Consult with local fire districts, as well as local emergency management agencies to receive and incorporate input into the final Plan, as appropriate, about:
   i. The location and types of ~~temporary~~ fire breaks to reduce the spread of wildfire and to protect high-fire consequence areas/resources from fire onsite spreading off site or off site fires impacting the site. ~~needed in the event of a fire on or off sit~~e (Examples include buffer areas. ~~V~~vegetation free areas. ~~such as~~ permanent gravel pads or base for facility components ~~and~~ or roads ~~as well as facility~~(graveled facility- perimeter and interior roads act as permanent fire breaks). ~~Include any areas where fire breaks would be prioritized to protect fires spreading off site or impacting the facility site.~~
   ii. Appropriate set up for water truck(s)/sources, including:
      a. The capacity of water truck(s)/water sources;
      b. Specifications for the pump including psi and water discharge capacity;
      c. Type and specifications for hose nozzle;
      d. Length and size of water hose.
   iii. Designate protocols for staff or emergency providers to erect or create fire breaks in the event of a fire, Designate estimated response times for on-site staff and local emergency service providers,
   iv. Provide the names and contact information for each of the below and confirm that each has registered for the Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management:

a. Primary contact(s) for certificate holder managing construction activities,

b. Primary contacts(s) for construction contractor managing construction,

c. Contact information for on-site construction manager(s) and/or foremen,

d. Identification of individual(s) responsible for initiating Red Flag Weather Construction Protocols during Red Flag weather conditions and warnings as designated in this Plan.

D. Include:

i. The date construction will begin;

ii. The days and times construction will occur;

iii. A description of the general construction phasing;

iv. A description and maps of:

a. The location of access points to the facility,

~~a.~~b. The location, fire breaks and/or buffers (during Red Flad Warnings) around any high-fire consequence areas/resources;

c. A description of emergency access procedures, including:

- Hh~~h~~ow emergency responders and/or adjacent landowners may access site for fire protection equipment or to extinguish an on-site fire when personnel will not be onsite; and
- Specific actions taken during Red Flag Weather Warnings including actions around buffers any high-fire consequence areas/resources;

~~b.~~d. The location, fire breaks and/or buffers (during Red Flad Warnings) around any high-fire consequence areas/resources;

~~c.~~e. The location(s) and type of water source(s);

1. The capacity of water truck(s)/water sources;
2. Specifications for the pump including psi and water discharge capacity;
3. Type and specifications for hose nozzle;
4. Length and size of water hose.

~~d.~~f. Location of fire protection equipment.

v. Identification of the type of fire protection equipment and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code and this Plan;

E. Provide with the Plan a list of property owners or tenants at the in situ address within 0.5 miles of the site boundary and confirmation of the following:

i. Contact property owners or tenants at the properties 0.5 miles from site boundary to confirm if they are registered for the Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management.

https://www.jeffco.net/ps/page/emergency-management#:~:text=Emergency%20management%20is%20best%20defined%20as%20the%20managerial%20function%20charged

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ii. If owners or tenants are not registered, provide them with the information and encourage them to register for emergency notifications and confirm with Department.

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F. Attach the Fire Prevention Plan and Emergency Management Plan described in this WMP.

1.2 Prior To Construction Tasks (PRE)

A WMP Pre-Construction Compliance Checklist that identifies the following action items ~~is~~ will be included a~~s~~t Attachment 2 to this plan.

A. Prior to construction certificate holder, construction contractor(s) and sub-contractor(s), with an invitation sent to ODOE and local fire departments, ~~as applicable,~~ shall hold a kick-off training(s) to ensure that construction personnel are trained on:

i. Fire prevention measures included in this Plan and the Fire Prevention Plan described in this Plan, including but not limited to, managing vegetation, locations for hot work, BPMs for construction personnel, limitations of construction activities that may occur during Red Flag Warnings, and maintaining defensible spaces.

ii. Identification of the type and location of fire protection equipment and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code and designated in this Plan;

iii. Proper usage of fire control equipment, including accessing and using the water truck/water source, pump, hose and nozzle;

iv. Safety procedures for addressing fires and other emergencies on-site, including procedures to follow and BMPs for activities during Red Flag Warnings and fire Weather Watches.

B. Prior to construction notify and submit to the local fire department(s) of:

i. Primary contacts for the certificate holder and construction personnel;

ii. The date construction will begin;

iii. The days and times construction will occur;

iv. A description of the general construction phasing;

v. A description and maps of:

1. The location of access points to the facility, with a description of emergency access procedures, particularly when personnel will not be onsite;

2. The location(s) of water source(s) and specifications for water pump, hose and nozzle.

3. Location of fire protection equipment.

vi. Safety procedures for addressing fires and other emergencies on-site, including procedures to follow and BMPs for activities during Red Flag Warnings and Fire Weather Watches

2 Construction (CON) Wildfire Risk Minimization Tasks and Procedures

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source;

A Construction WMP Compliance Checklist that identifies the action items intended to be included in the final construction WMP ~~is~~ will be included a~~s~~t Attachment 3 to this plan. The measures in this Section 2.0 shall be finalized based upon Section 1.0 of this Plan and will be implemented during all construction activities.

During construction the certificate holder shall:

A. Fill out and submit to the Department in the semi-annual construction report the Construction WMP Compliance Checklist included in this Plan as Attachment 3.

B. Every 6 months, review property owner information to determine if there are new or different property owners or tenants within 0.5 miles of the site boundary. Provide confirmation in the semi-annual construction progress report.

i. Contact new property owners or tenants at the properties 0.5 miles from site boundary to confirm if they are registered for the Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management.

https://www.jeffco.net/ps/page/emergency-management#:~:text=Emergency%20management%20is%20best%20defined%20as%20the%20managerial%20function%20charged

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ii. If owners or tenants are not registered, provide them with the information and encourage them to register for emergency notifications.

https://www.jeffco.net/ps/page/emergency-management#:~:text=Emergency%20management%20is%20best%20defined%20as%20the%20managerial%20function%20charged

https://member.everbridge.net/892807736724035/login

C. Contact 911 in the event of:

i. A fire or emergency on-site that cannot be addressed by personnel on-site and requires the assistance of fire or emergency medical personnel;

ii. A fire ignition on-site that spreads out of the fence line;

iii. Any fire off-site that does not have emergency responders on site.

1. To the extent that construction personnel can safely assist and/or provide equipment to help extinguish off-site fires until emergency responders are on site, it is encouraged to do so to assist in the spread of the fire, loss of life, property and damage to the environment.

D. During construction certificate holder, construction contractor(s) and subcontractor(s), as applicable, shall hold training(s) to ensure that construction personnel are trained on:

i. Identification of the type and location of fire protection equipment and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code and this Plan;

ii. Proper usage of fire control equipment designated in this Plan;

iii. The type and location(s) of water source(s) including how to use the water truck/water source, pump, hose and nozzle;

iv. Safety procedures for addressing fires and other emergencies on-site.

In addition to the measures described in this plan, the risk of a wildfire affecting the public safety, first responders, or Oregon Energy Facility Siting Council-protected resources would be minimized by the procedures listed in Table 1.

Table 1. Procedures to Minimize Impacts to Resources~~Wildfire Risk~~

Topic	Procedures
Public health and safety	The public will be excluded from the solar and substation facilities by fencing. Ground mounted inverters, and junction boxes will be surrounded by bollards to minimized inadvertent vehicle/farm equipment collisions with electrical equipment.
First Responders	Response to fires in the facility should focus on controlling spread to adjacent lands. Construction personnel will be trained in the use of fire extinguishers for responding to incipient stage fires on site.
Resource Protection	Resources covered by Oregon Energy Facility Siting Council standards near the project area include agricultural land, shrub steppe habitat, and cultural resources. The existing county roads will form a fire break between fields that will discourage the spread of wildfire between fields into wildlife habitat or cultural resources.

2.1 Wildfire Risk Assessment

This Plan has been prepared to meet the approval standard under OAR 345-022-0115(1)(b), which requires:

(5) *Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;*

~~Prior to construction of the Facility, provide a summary update of wildfire risk at the site as designated under OAR 345-022-0115, if significantly different from Final Order on Amendment 1.~~

2.2 ~~Inspection and~~ Vegetation Management

(8) Describe the procedures, standards, and time frames that the applicant will use to inspect facility

components and manage vegetation in the areas identified under subsection (a) of this section;

2.2.1 Vegetation/Defensible Space Management, and Ignition Source BMPs

The Certificate Holder and contractor(s) will maintain vegetation within the Site Boundary and will also maintain a defensible space clearance along Facility features. Defensible space will be free of combustible vegetation or other materials. Roads and parking areas will be maintained to be free of vegetation tall enough to contact the undercarriage of the vehicle.

During construction clearing, grubbing, and grading, the Contractor will a create noncombustible space for at least 10 feet within the fence line and another minimum 10-foot Limits of Disturbance buffer outside the fence line for a total of a minimum of 20 feet of noncombustible buffer around the perimeter of the site. In addition, it is not anticipated that any Hot Work permit will be required in the construction of the photovoltaic (PV) field. Vegetation in work areas, if not removed, will be maintained to not exceed 10-12 inches in height. Vegetation near, at, or taller than the maximum height shall be removed or mowed. Mowing must be done in advance of fire season or accordance to any fire restrictions.

Any vegetation removed from the site will be disposed of and not stored onsite. Certificate holder and construction contractors will prevent the accumulation of combustible "burn piles" on site.

The following best management practices to minimize fire risk from vehicle travel and fueling activities would be implemented at the site during construction:

- The movement of vehicles will be planned and managed to minimize fire risk.
- The contractor(s) will be responsible for identifying and marking paths for all off-road vehicle travel. All off-road vehicle travel will be required to stay on the identified paths. No off-road vehicle travel will be permitted while working alone. Travel off road or parking in vegetated areas will be restricted during fire season.
- Areas with grass that are as tall or taller than the exhaust system of a vehicle must be wetted before vehicles travel through it.
- Workers will be instructed to shut off the engine of any vehicle that gets stuck, and periodically inspect the area adjacent to the exhaust system for evidence of ignition of vegetation. Stuck vehicles will be pulled out rather than "rocked" free and the area will be inspected again after the vehicle has been moved.
- All combustion engines (including but not limited to off road vehicles, chainsaws, and generators) will be equipped with a spark arrester that meets U.S. Forest Service Standard 5100-1.
- The contractor(s) will designate a location for field fueling operations at the temporary construction yards. Any fueling of generators, pumps, etc. shall take place at this location only.
- Fuel containers, if used, shall remain in a vehicle or equipment trailer, parked at a designated location alongside a county right-of-way. No fuel containers shall be in the vehicles that exit the right-of-way except the five-gallon container that is required for the water truck pump.
- Smoking shall only be allowed in designated smoking areas at the Facility.

2.3 Preventative and Minimization Actions for Wildfire Risk

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

2.3.1 Preventative Actions: Construction Facility Design and Maintenance

Unless already paved, access roads will be graveled. The fenced areas around the collector substation, operations and maintenance structure, and meteorological stations, will be graveled, with no vegetation present. All newly constructed roads will be graded and graveled to meet load requirements for all equipment. Service roads, approximately 14 feet wide with 2-foot shoulders on each side, will be constructed within the solar array fence line, to facilitate access for construction and maintenance purposes. Vegetation will be cleared and maintained along service roads to provide a vegetation clearance area for fire safety. Service roads will be all-weather, compacted soil or gravel. Vegetation maintenance along service roads will include mowing as needed for fire safety requirements. Facility access roads will be sufficiently sized for emergency vehicle access. All road specifications, vegetation management practices, and other fire safety requirements will be reviewed with and designed in compliance with the fire district.

2.3.2 Preventative Programs

The Certificate Holder will implement the following programs to minimize fire risk during operations of the Facility.

2.3.2.1 ~~OSHA-Compliant~~ Fire Prevention Plan

All workers, contracting employees, and other personnel performing official duties at the Facility will conduct work under a Fire Prevention Plan that will be provided with the final WMP, the plan will ensure ~~that meets applicable portions of 29 Code of Federal Regulations (CFR) 1910.39, 29 CFR 1910.155, and 29 CFR 1910, subpart L. The plan will ensure~~ that:

- Workers are trained in fire prevention, good housekeeping, and use of a fire extinguisher
- Workers are trained in the evacuation procedures.
- Necessary equipment is available to fight incipient stage fires. Fire beyond incipient stage shall be managed using local fire response organizations and calling 911.
- Provide necessary safety equipment for handling and storing combustible and flammable material.
- Ensure equipment is maintained to prevent and control sources of ignition.
- Do not allow smoking or open flames in an area where combustible materials are located or during Red Flag Warnings.
- Implement a Hot Work Procedure and permit program, as outlined below.

2.3.2.2 High Risk Locations, Hot Work, Fire Weather Monitoring and Red Flag Warning Protocols

At all times, all hot work (any cutting, welding, or other activity that creates spark or open flame) must

be conducted on roads or on non-combustible surfaces. Fire suppression equipment shall be immediately available during hot work activities. Following the completion of hot work, the Certificate Holder or contractor(s) must maintain a fire watch for 60 minutes to monitor for potential ignition.

High Risk Construction Locations include:

- Areas where Hot Work occurs;
- Operation of power driven machinery and tools or vehicles in vegetated areas;
- Smoking areas.

High-fire consequence areas/resources, if any, and buffer area limiting activities during Red Flag Weather Warnings include:

- Exiting Transmission Lines (reference to map). Existing ROW without facility components serves as buffer.

~~Burn probability, expected flame length, and overall risk may increase during periods of the fire season.~~ A fire weather watch indicates the potential for weather conducive to large fore spread in the next 12 to 72 hours. A Red Flag Warning is issued when current weather conditions are conducive to large fire growth in the next 24 hours. Frontier Regional Emergency Alert Program is the emergency notification system for Jefferson County Emergency Management and provides notifications of emergencies, Red Flag Warnings, and evacuations. Personnel on Site designated in this Plan will monitor Fire Weather Watches and sign up for notifications for Red Flag Warnings via the Frontier Regional Emergency Alert Program.

During Red Flag Warning Weather Conditions, the individual(s) responsible for monitoring Red Flag Warnings and initiating Red Flag Weather Construction Protocols shall: ~~.~~

1. Communicate that a Red Flag Warning has been issued to on-site staff,
2. Ensure that water source or hose to water source pump and nozzle, are accessible to construction activities,
3. Halt hot work in high risk locations designated in this Plan, ~~,~~
~~3.~~4. Halt construction activities within 200 feet of buffer areas for high-fire consequence areas/resources;
~~4.~~5. Drive or park on roads to avoid sparking a fire in grass or brush,
~~5.~~6. Halt construction activities that may increase fire risk,
~~6.~~7. Contact 911 in the event of:
    i. A fire or emergency on-site that cannot be addressed by personnel on-site and requires the assistance of fire or emergency medical personnel;
    ii. A fire ignition on-site that spreads out of the fence line;
    iii. Any fire off-site that does not have emergency responders on site.
        1. To the extent that construction personnel can safely assist and/or provide equipment

to help extinguish off-site fires until emergency responders are on site, it is encouraged to do so to assist in the spread of the fire, loss of life, property and damage to the environment.

2.3.2.3 Emergency Management Plan

The Emergency Management Plan (EMP) will be prepared prior to construction by the certificate holder and construction contractor and will contain policies and procedures for preparing for and responding to a range of potential emergencies, including fires. Implementation of the EMP will ensure risks to public health and safety and risks to emergency responders are minimized. Any potential fires inside the solar array will be controlled by trained staff who will be able to access the Facility around the clock. These measures will help keep external fires out or internal fires in. The EMP will cover response procedures that consider the dry nature of the region and address risks on a seasonal basis. The plan will also specify communication channels the Certificate Holder intends to pursue with local fire protection agency personnel, for example, a construction kick-off meeting to discuss emergency planning as described in this Plan, and invitations to observe any emergency drill conducted at the Facility.

In addition to the emergency responses to be stipulated in the EMP, personnel will be trained on the RACE procedure to implement in the event of a fire start. The RACE procedure includes:

- **Rescue** anyone in danger (if safe to do so);
- **Alarm** – call the control room, who will then determine if 911 should be alerted;
- **Contain** the fire (if safe to do so); and
- **Extinguish** the incipient fire stage (if safe to do so).

Personnel on site will carry fire suppression equipment during the fire season in their vehicles. This equipment shall include, at a minimum:

- Fire Extinguisher: Dry chemical. 2.5 or 2.8 pound. 1A-10B: C U/L rating, properly mounted or secured;
- Pulaski
- Hand Shovel: Round point. 26 to 28 in "D" Handle, blade - 12 inches long and 10 inches wide;
- Collapsible Pail or Backpack Pump: 5-gallon capacity; and
- Drip Can: 5-gallon capacity.

This fire suppression equipment shall be stored on-site and available to personnel during all construction activities and seasons.

Water supply designated for fire protection such as a water truck(s), water buffalo, or tank with minimum 500-gallon capacity will be on-site during all construction activities and will include a pump, hose, and nozzle. The water truck or water supply shall include the following and be maintained at full or near full, unless approved by the Department:

A. Pump should be maintained ready to operate and capable to provide a discharge of not less than 20 gallons per minute at 115 psi at pump level. Note: Volume pumps will not produce the necessary pressure to effectively attack a fire start. Pressure pumps are recommended.

B. Water supply shall be a minimum of 300 gallons if a self-propelled engine.

C. Water supply shall be a minimum of 500 gallons if not self-propelled (pond, stream, tank, sump, trailer, etc.)

D. Provide enough hose (500 feet minimum) not less than 3/4" inside diameter to reach areas where power driven machinery has worked.

E. Water supply, pump, and at least 250' of hose with nozzle must be maintained as a connected, operating unit ready for immediate use.

Personnel will receive training on use of suppression equipment.

All personnel shall be equipped with communication equipment capable of reaching the control room from all locations within the Site Boundary.

3.0 Plan Updates

This Plan may be amended from time to time by agreement of the certificate holder and the Oregon Energy Facility Siting Council (EFSC) or ODOE, acting within its delegated authority of EFSC. Such amendments may be made without amendment of the site certificate. EFSC authorizes ODOE to agree to amendments to this Plan. ODOE will notify EFSC of all amendments, and EFSC retains the authority to approve, reject, or modify any amendment of this Plan agreed to by ODOE.

4.0 References

Jefferson County. 2022a. Multi-Jurisdictional Natural Hazard Mitigation Plan. Report for: Jefferson County, Culver, Lake Chinook Fire District, Madras and Metolius. Jefferson County, Oregon: Jeferson County, Central Oregon Intergovernmental Council. https://www.jeffco.net/media/27581

Jefferson County. 2022b. 2022 Jefferson County Community Wildfire Protection Plan. Central Oregon Intergovernmental Council. https://www.jeffco.net/media/26456

Attachment F-2: Draft Operational Wildfire Mitigation Plan

Attachment F.2. Draft Operations Wildfire Mitigation Plan

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Madras Solar Energy Facility

Draft Operations Wildfire Mitigation Plan

Madras Solar Energy Facility
June 2024

Prepared for

Madras PV1, LLC

600 Park Offices Drive, Ste. 285

Durham, NC, 27709

Prepared by

TETRA TECH

Tetra Tech, Inc.

Amended by Department October 2024

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Table of Contents

Attachment V-2. Draft Operations Wildfire Mitigation Plan 1
1 Finalization and Pre-Operational Tasks 1
1.1 Finalizing Tasks in this Plan Prior To Operation (PRE): 1
1.2 Prior To Operation Tasks (PRO) ..... 3~~2~~
2 Operational (OPR) Wildfire Risk Minimization Procedures 4
2.1 Wildfire Risk Assessment Update ..... 7~~6~~
2.2 Inspection and Management ..... 7~~6~~
2.2.1 Facility Inspections ..... 7~~6~~
2.2.2 Vegetation Management and Defensible Spaces ..... 8~~7~~
2.3 Preventative and Minimization Actions for Wildfire Risk ..... 10~~9~~
2.3.1 Preventative Actions ..... 10~~9~~
2.3.2 Facility Design Features ..... 10~~9~~
2.3.3 Preventative Programs ..... 11~~10~~
2.4 Plan Updates and Future Best Management Practices ..... 14~~13~~
2.4.1 Plan Updates and Modification ..... 14~~13~~
3 References ..... 16~~15~~

Table 1. Procedures to Wildfire Risk 5
Table 2. Operational Inspections for Electrical Components ..... 7~~6~~
Table 3. Vegetation Management Procedures by Facility Component ..... 9~~8~~
Table 4. Design Considerations for Fire Safety by Facility Component ..... 10~~9~~
Table 5. Resources for Future Best Practices 15

Acronyms and Abbreviations

APLIC	Avian Power Line Interaction Committee
Certificate Holder	Madras PV1 LLC
CFR	Code of Federal Regulations
CWPP	Community Wildfire Protection Plan
EMP	Emergency Management Plan
Facility	Madras Solar Energy Facility
NHMP	Jefferson County Multi-Jurisdictional Natural Hazards Mitigation Plan
OAR	Oregon Administrative Rules
Plan	Operations Wildfire Mitigation Plan
SCADA	supervisory, control, and data acquisition

1 Finalization and Pre-Operational Tasks

This Wildfire Mitigation Plan (Plan) was prepared to meet the submittal requirements in Oregon Administrative Rule (OAR) 345-021-0010(1)(v), including providing evidence that the Madras Solar Energy Facility (Facility) complies with the approval standard in OAR 345-022-0115.

Section 1.1 of this plan includes measures to be completed to finalize the final Operational Wildfire Mitigation Plan (WMP). Items in Section 1.1. must be included in the final plan and Section 1.2 are actions that must be completed and documented prior to operation.

1.1 Finalizing Tasks in this Plan Prior To Operation (PRE):

An Operational WMP Finalization Compliance Checklist that identifies the following action items ~~is~~ will be included as~~t~~ Attachment 1 to this plan.

To finalize this Plan prior to operation, the certificate holder shall:

A. Prior to operation of the Facility, in the Final Operational WMP, the certificate holder will provide a summary update of wildfire risk at the site as designated under OAR 345-022-0115, if significantly different from Final Order on Amendment 1.

~~A.~~B. Incorporate guidance outlined in the wildfire annex of the Jefferson County Multi-Jurisdictional Natural Hazard Mitigation Plan (NHMP; Jefferson County 2022a), which is the Jefferson County Community Wildfire Protection Plan (CWPP; Jefferson County 2022b).

i. Identify what provisions of these plans are applicable to Facility operation.
ii. Certificate holder will incorporate guidance regarding the fuel breaks for defensible/survivable space per the Jefferson County adopted NHMP and OAR 629-044-1085, as applicable.
iii. Certificate holder will incorporate guidance from Chapter 4: Emergency Operations of the Jefferson County NHMP regarding wildland fire suppression procedures as needed (Jefferson County 2016).

~~B.~~C. Consult with local fire districts, as well as local emergency management agencies to receive and incorporate input into the final Plan, as appropriate, about:

i. The location and types of ~~temporary~~ fire breaks that could be added to the facility to reduce the spread of wildfire and to protect high-fire consequence areas/resources from fire onsite spreading off site or off site fires impacting the site. (~~V~~Examples include buffer areas, vegetation free areas, ~~such as~~ permanent gravel pads or base for facility components ~~and~~ or roads (graveled facility perimeter and interior roads act as permanent fire breaks).~~as well as facility perimeter and interior roads act as permanent fire breaks). Include any areas where fire breaks would be prioritized to protect fires spreading off site or impacting the facility site.~~

ii. Designate protocols for staff or emergency providers to erect or create fire breaks in the event of a fire,

iii. Designate estimated response times for on-site staff and local emergency service providers,

iv. Provide the names and contact information for each of the below and confirm that each has registered for the Frontier Regional Emergency Alert Program, the

emergency notification system for Jefferson County Emergency Management:

a. Primary contact(s) for certificate holder managing operational activities,

b. Contact information for any on-site or operational manager(s),

c. Identification of individual(s) responsible for initiating Red Flag Weather Protocols during Red Flag weather conditions and warnings as designated in this Plan.

~~C.~~D. Provide with Plan site map(s) that identify:

i. The location of facility components, ~~and~~ emergency shut offs, location of any chemicals that have flammable properties and hazardous material storage areas;~~;~~

~~ii.~~ The location of access points to the facility;

ii. The location, fire breaks and/or buffers (during Redl Flad Warnings) around any high-fire consequence areas/resources;

iii. A description of emergency access procedures, including:

a. H~~h~~ow emergency responders and/or adjacent landowners may access site for fire protection equipment or to extinguish an on-site fire when personnel will not be onsite; and

~~a.~~b. Specific actions taken during Red Flag Weather Warnings including actions around buffers any high-fire consequence areas/resources;

~~iii.~~iv. The location(s) of water source(s) that will be on-site during fire season; Appropriate set up for water truck(s)/sources, on site during fire season:

a. The capacity of water truck(s)/water sources;

b. Specifications for the pump including psi and water discharge capacity;

c. Type and specifications for hose nozzle;

d. Length and size of water hose.

~~iv. The identification or location of any chemicals that have flammable properties and hazardous material storage areas;~~

v. Identification of the type and location of fire protection equipment.

~~D.~~E. Provide with the Plan a list of property owners or tenants at the in-situ address within 0.5 miles of the site boundary and confirmation of the following:

i. Contact property owners or tenants at the properties 0.5 miles from site boundary to confirm if they are registered for Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management.

https://www.jeffco.net/ps/page/emergency-management#:~:text=Emergency%20management%20is%20best%20defined%20as%20the%20managerial%20function%20charged

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ii. If owners or tenants are not registered, provide them with the information and encourage them to register for emergency notifications.

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F. Attach the Fire Prevention Plan, Equipment Inspection Checklists, Emergency Management Plan described in this WMP.

~~E.~~

1.2 Prior To Operation Tasks (PRO)

A WMP Pre-Operational Compliance Checklist that identifies the following action items ~~is~~ will be included a~~s~~t Attachment 2 to this plan.

A. Organize and hold an on-site meeting and training with certificate holder and operational personnel, inviting equipment manufacturers, specialty contractors, local fire department(s), emergency management office personnel, ODOE, and any other emergency management agency that covers:

i. The location of electrical facility components and the fire safety measures associated with each component;

1. Based on the type of battery storage technology selected, provide battery-specific safety protocols, including how to appropriately address chemical fires, in the event of an emergency.

ii. The type and location of fire protection equipment and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code;

iii. The location(s) of water source(s) and proper usage, storing and maintenance for the pump, hose nozzle; and water hose

B. Provide site map(s) and information to the local fire department(s) that identify:

i. The location of facility components and emergency shut offs, location of any chemicals that have flammable properties and hazardous material storage areas;

ii. The location of access points to the facility;

iii. A description of emergency access procedures, including how emergency responders and/or adjacent landowners may access site for fire protection equipment or to extinguish an on-site fire when personnel will not be onsite;

iv. The location(s) of water source(s) that will be on-site during fire season; Appropriate set up for water truck(s)/sources, on site during fire season, including:

1. The capacity of water truck(s)/water sources;
2. Specifications for the pump including psi and water discharge capacity;
3. Type and specifications for hose nozzle;
4. Length and size of water hose.

~~The identification or location of any chemicals that have flammable properties and hazardous material storage areas~~;

v. The type and location of fire protection equipment on site.

2 Operational (OPR) Wildfire Risk Minimization Procedures

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source;

An Operational WMP Compliance Checklist that identifies the following action items ~~is~~ will be included a~~s~~t Attachment 3 to this plan. The measures in Section 2.0 shall be finalized based upon Section 1.0 of this Plan and will be implemented during operation of the facility.

During operation of the facility the certificate holder shall:

A. Fill out and submit to the Department in the annual report the Operational WMP Compliance Checklist included in this Plan as Attachment 1.

B. Annually, the certificate holder will review property owner information to determine if there are new or different property owners or tenants within 0.5 miles of the site boundary. Provide confirmation in the annual report.

i. Contact new property owners or tenants at the properties 0.5 miles from site boundary to confirm if they are registered for the Frontier Regional Emergency Alert Program, the emergency notification system for Jefferson County Emergency Management.

https://www.jeffco.net/ps/page/emergency-management#:~:text=Emergency%20management%20is%20best%20defined%20as%20the%20managerial%20function%20charged

https://member.everbridge.net/892807736724035/login

ii. If owners or tenants are not registered, provide them with the information and encourage them to register for emergency notifications.

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https://member.everbridge.net/892807736724035/login

C. Contact 911 in the event of:

i. A fire or emergency on-site that cannot be addressed by personnel on-site and requires the assistance of fire or emergency medical personnel;

ii. A fire ignition on-site that spreads out of the fence line;

iii. Any fire off-site that does not have emergency responders on site.

a. To the extent that operational personnel can safely assist and/or provide equipment to help extinguish off-site fires until emergency responders are on site, it is encouraged to do so to assist in the spread of the fire, loss of life, property and damage to the environment.

D. After the first year of operation and every other year after (every two years) during operation certificate holder and operational personnel shall invite, equipment manufacturers, or specialty contractors, local fire department(s), emergency management office personnel, ODOE, and any other emergency management agency to a training that will cover:

i. The type and location of fire protection equipment and fire protection equipment maintenance requirements, in accordance with the Oregon Fire Code and this Plan;

ii. The location of electrical facility components and the fire safety measures associated with each component;

a. Based on the type of battery storage technology selected, provide battery-specific safety protocols, including how to appropriately address chemical fires, in the event of an emergency.

iii. Proper usage of fire control equipment;

iv. The location(s) of water source(s), specifications and proper usage for the water pump, hose, and nozzle.

v. Safety procedures for addressing fires and other emergencies on-site, including procedures to follow and BMPs for activities during Red Flag Warnings and Fire Weather Watches

In addition to the measures described in this plan, the risk of a wildfire affecting the public safety, first responders, or Oregon Energy Facility Siting Council-protected resources would be minimized by the procedures listed in Table 1.

Table 1. Procedures to Minimize ~~Wildfire Risk~~Impacts to Resources

Topic	Procedures
Public health and safety	The public will be excluded from the solar and substation facilities by fencing. Ground mounted inverters, and junction boxes will be surrounded by bollards to minimized inadvertent vehicle/farm equipment collisions with electrical equipment.
	Response to fires in the facility should focus on controlling spread to adjacent lands.

First Responders	Operational personnel will be trained in the use of fire extinguishers for responding to incipient stage fires on site.
Resource Protection	Resources covered by Oregon Energy Facility Siting Council standards near the project. area include agricultural land, shrub steppe habitat, and cultural resources. The existing county roads will form a fire break between fields that will discourage the spread of wildfire between fields into wildlife habitat or cultural resources.

2.1 Wildfire Risk Assessment Update

This Plan has been prepared to meet the approval standard under OAR 345-022-0115(1)(b), which requires:

(5) *Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;*

~~Prior to operation of the Facility, in the Final Operational WMP, the certificate holder will provide a summary update of wildfire risk at the site as designated under OAR 345-022-0115, if significantly different from Final Order on Amendment 1.~~

2.2 Inspection and Management

(8) Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in the areas identified under subsection (a) of this section;

2.2.1 Facility Inspections

Facility components will be inspected quarterly. ~~The supervisory, control, and data acquisition (SCADA) system collects operating and performance data from the facility as a whole and allows remote operation.~~ The Certificate Holder will monitor the Facility components, such as the substation and solar arrays, 24 hours a day, 7 days a week including shutdown capabilities via the SCADA system. These operational monitoring and maintenance measures are also discussed in Section 5.2.

On-site inspections of Facility equipment will occur quarterly. On-site inspections will include checklists provided by the original equipment manufacturer and the use of utility industry best practices. ~~Smoke/fire detectors will be placed around the site that will be tied to the SCADA system and will contact local firefighting services as needed.~~

The Facility components that could cause electrical fires are solar inverters, substation, and overhead electrical lines. The Applicant will inspect these components during operations as outlined in Table 2.

Table 2. Operational Inspections for Electrical Components

Inspection	Procedure	Standard	Time frame
Solar Inverter and panels	Visual inspection of inverter and surrounding area.	SPCC Plan[1] Manufacturer's maintenance recommendations	Monthly SPCC Bi-annual Preventative Maintenance
Substation	Visual inspection of MPT, Avian Power Line Interaction Committee (APLIC) measures, and	Manufacturer's maintenance recommendations APLIC[2]	Yearly (APLIC)

Inspection	Procedure	Standard	Time frame
	surrounding area.		
Overhead electrical lines	Visual inspection of components, grounding, APLIC measures, vertical clearance distance between conductor and vegetation.	National Energy Reliability Corporation (NERC)[3] APLIC	Bi-annual

1. The Operational SPCC Plan for the Facility will require these components to be inspected monthly for spills. During these inspections, Operational Staff will also visually inspect the component and surrounding area.

2. Certificate Holder will develop an inspection checklist and program of electrical equipment based on manufacturer's recommendations for individual components.

3. Vegetation maintenance standard FAC-003-0.

2.2.2 Vegetation Management and Defensible Spaces

The Certificate Holder will maintain vegetation within the fence line and will also maintain a 10- foot noncombustible, defensible space clearance along the fenced perimeter of the Site Boundary. Defensible space will be free of combustible vegetation or other materials. Roads and parking areas will be maintained to be free of vegetation tall enough to contact the undercarriage of the vehicle.

A physical vegetation survey assessment of the fenced area will be completed at least twice a year to monitor for vegetation clearances, maintenance of fire breaks, and monitor for wildfire hazards.

One of the vegetation survey assessments will occur in May or June, prior to the start of the dry season, a time when wildfire risk is heightened. The survey will be conducted by the Site Operations Manager and will be used to assess the frequency of upcoming vegetation maintenance and identify areas that may need additional attention. The Site Operations Manager will visually assess and document vegetation height, abundance, and areas where vegetation should not be present such as crushed rock bed around collector substations. The vegetation survey assessment will determine that clearances and fire breaks (vegetative clearance areas and areas determined to remain clear to act as permanent fire breaks or areas where temporary fire breaks may be deployed in the event of a fire) are satisfactory, and if not, the mitigation procedures will be implemented (e.g., vegetation management) to ensure clearances and fire breaks are satisfactory. The vegetation survey will document:

- Location;
- Species;
- Estimated growth rate;
- Abundance;
- Clearance/setbacks; and
- Risk of fire hazard.

Additional vegetation surveys may be required throughout the season based on seasonally heightened fire risk. Vegetation maintenance procedures and best management practices will be

followed during operation of the Facility to ensure that vegetation does not grow in a manner that blocks or reduces solar radiation reaching the solar panels and reduce the risk of starting a fire. Vegetation control will employ best management practices and techniques that are most appropriate for the local environment. These may include physical vegetation control such as mowing or introduction of a non-invasive species that is low growing. In rare circumstances where it is necessary to use herbicides, an effort will be made to minimize use and only apply biodegradable, U.S. Environmental Protection Agency-registered, organic solutions that are non-toxic to wildlife. Any herbicides used for vegetation management the site will be selected and used in a manner that fully complies with all applicable laws and regulations.

Vegetation within the fence line and below the solar arrays will be maintained to a height of 10-12 inches. Vegetation near, at, or taller than the maximum height shall be removed or mowed. Mowing must be done in advance of fire season or accordance to any fire restrictions. At no point shall vegetation come in contact with electrical equipment. Any vegetation removed from the site will be disposed of and not stored onsite. Certificate holder and contractors will prevent the accumulation of combustible "burn piles" on site.

Exposed electrical wires should be running under the solar panels at the midpoint or higher than the center of the panel. Vegetation will be removed within 10-foot perimeter of the inverter/transformer pads. Gravel or similar noncombustible base will be located within the 10-foot perimeter of these pads. Vegetation will be removed from inside the Facility collector substation fence line. Gravel or similar noncombustible base shall be used.

To reduce the availability of fuels for wildfire near electrical components, the Certificate Holder will install a non-flammable gravel base around solar inverters substations and implement ongoing vegetation management outlined in Table 3 to ensure that vegetation does not grow in these graveled areas.

Table 3. Vegetation Management Procedures by Facility Component

Vegetation Management	Procedure	Standard	Time frame
Solar Inverter	Herbicide application on gravel pad around inverter to prevent vegetation growth.	IEEE 80 NEC 70	Yearly, depending on vegetation condition.
Substation	Herbicide application on substation gravel pad. Highly compacted gravel foundations of substations are not suitable for vegetation ground.	IEEE 80 NEC 70	Yearly, depending on vegetation condition.
Overhead electrical lines	Mow vegetation to achieve clearance requirements between conductor and ground.	NERC	Yearly, depending on vegetation condition.

2.3 Preventative and Minimization Actions for Wildfire Risk

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

2.3.1 Preventative Actions

The Certificate Holder will minimize risk of Facility components causing wildfire through preventative actions. In the design of the Facility, the Certificate Holder will implement the design considerations and best practices outlined in Table 4 to minimize electrical fire risk from facility components.

Table 4. Design Considerations for Fire Safety by Facility Component

Consideration	Solar Inverter	Substation	Overhead Lines
Electrical connections by qualified electricians	X	X	X
Inspections for mechanical integrity prior to energizations	X	X	X
Lighting protection	X	X	X
Corrosion protection	X	X	X
Strain relief of connecting cabling	X	X	X
Protection against moisture	X	X	X
Grounding systems	X	X	X
Limits on input voltage and power	X	X	X
Safety setback from structures	X[1]	X[1]	X[2]
Technology specific design standards	X[3]	X[4]	X[3]

1. 50-foot setback from structures.
2. Vertical and horizontal clearances from structures depends on voltage of conductor.
3. NFPA 70.
4. IEEE 979.

2.3.2 Facility Design Features

During Facility operations, the areas within the Site Boundary that are subject to a heightened risk of wildfire include the solar array areas. The solar array areas will have low-growing vegetation maintained below the solar arrays during the operational period of the Facility. Measures for reducing the risk of fire ignition and reducing the risk of equipment damage were a wildfire to occur are discussed further in Section 5.2, including the Facility's vegetation management program (see Section 4.2), and through the emergency response procedures that will be described in the Emergency Management Plan (EMP) and in this Plan. The EMP will be developed for the Facility and is outlined below in Section 5.2.5. The collector substation area, transformer pads, and the permanent, fenced parking and storage area will have reduced risk for fire due to the fact that these areas will have a gravel base with no vegetation within a 10-foot perimeter to reduce fire risk.

The Facility components will meet National Electrical Code and Institute of Electrical and Electronics

Engineers standards and will not pose a significant fire risk. The solar array will have shielded electrical cabling, as required by applicable code, to prevent electrical fires. In addition, the collector system and substation will have redundant surge arrestors to deactivate the Facility during unusual operational events that could start fires. The collector substation and the switchyard will have also sufficient spacing between equipment to prevent the spread of fire.

Unless already paved, access roads will be graveled. The fenced areas around the collector substation, operations and maintenance (O&M) building, meteorological stations, and energy storage system will be graveled, with no vegetation present. All newly constructed roads will be graded and graveled to meet load requirements for all equipment. Service roads, approximately 14 feet wide with 2-foot shoulders, will be constructed within the solar array fence line, to facilitate access for maintenance purposes. Approximately 20-foot-wide service roads will be constructed outside the solar array fence line to reach the separately fenced substations. Vegetation will be cleared and maintained along service roads to provide a vegetation clearance area for fire safety. Service roads will be all-weather, compacted soil or gravel, with an internal turning radius of 60 feet. Vegetation maintenance along service roads will include mowing as needed for fire safety requirements. Facility access roads will be sufficiently sized for emergency vehicle access. Vegetation free areas such as gravel pads or base and facility perimeter and interior roads act as a permanent fire break which could minimize the spread of fires on site or impacts from an external wildfire.

Smoke/fire detectors will be placed around the site that will be tied to the SCADA system and will contact local firefighting services. The SCADA system collects operating and performance data from the solar array and from the facility as a whole and allows remote operation from the O&M building. The limited vegetation present within the Site Boundary during operations will also help to minimize spread of fire. Any potential fires inside the Site Boundary will be controlled by trained staff who will be able to access the Facility around the clock. These measures will help keep external fires out or internal fires in.

2.3.3 Preventative Programs

The Certificate Holder will implement the following programs to minimize fire risk during operations of the Facility.

2.3.3.1 ~~*OHSA-Compliant*~~ *Fire Prevention Plan*

All workers, contracting employees, and other personnel performing official duties at the Facility will conduct work under a Fire Prevention Plan that ~~meets applicable portions of 29 Code of Federal Regulations (CFR) 1910.39, 29 CFR 1910.155, and 29 CFR 1910, subpart L. The plan~~ will ensure that:

- Workers are trained in fire prevention, good housekeeping, and use of a fire extinguisher.
- Necessary equipment is available to fight incipient stage fires. Fire beyond incipient stage shall be managed using local fire response organizations and calling 911.
- Provide necessary safety equipment for handling and storing combustible and flammable material.
- Ensure equipment is maintained to prevent and control sources of ignition.

- Do not allow smoking or open flames in an area where combustible materials are located or during Red Flag Warning.
- Implement a Hot Work Procedure and permit program as outlined below.

2.3.3.2 *Electrical Safety Program*

All operational workers will be trained in electrical safety and the specific hazards of the facility. This training will address:

- Minimum experience requirements to work on different types of electrical components;
- Electrical equipment testing and troubleshooting;
- Switching system;
- Provisions for entering high voltage areas (e.g., substation);
- Minimum approach distances; and
- Required personal protective equipment.

2.3.3.3 *Lock Out/Tag Out Program*

During maintenance activities on electrical equipment is the de-energized and physically locked or tagged in the de-energized positions to inadvertent events that could result in arc flash.

2.3.3.4 *High Risk Locations, Hot Work, Fire Weather Monitoring, and Red Flag Warning Protocols*

At all times, all hot work (any cutting, welding, or other activity that creates spark or open flame) must be conducted on roads or on non-combustible surfaces. Fire suppression equipment shall be immediately available during hot work activities. Following the completion of hot work, the Certificate Holder or contractor(s) must maintain a fire watch for 60 minutes to monitor for potential ignition.

High Risk Construction Locations include:

- Areas where Hot Work occurs;
- Operation of power-driven machinery and tools or vehicles in vegetated areas;
- Smoking areas.

High-fire consequence areas/resources, if any, and buffer area limiting activities during Red Flag Weather Warnings include:

- Exiting Transmission Lines (reference to map). Existing ROW without facility components serves as buffer.

At least during each fire season (approximately from June – October) during operations, the certificate holder will ensure that a water source meeting the specifications in this plan will be on-site.

~~Burn probability, expected flame length, and overall risk may increase during periods of the fire season.~~ A fire weather watch indicates the potential for weather conducive to large fore spread in the next 12 to 72 hours. A Red Flag Warning is issued when current weather conditions are conducive to large fire growth in the next 24 hours. Frontier Regional Emergency Alert Program is the emergency

notification system for Jefferson County Emergency Management and provides notifications of emergencies, Red Flag Warnings, and evacuations. Personnel on Site designated in this Plan will monitor Fire Weather Watches and sign up for notifications for Red Flag Warnings via the Frontier Regional Emergency Alert Program.

During Red Flag Warning Weather Conditions, the individual(s) responsible for monitoring Red Flag Warnings and initiating Red Flag Weather Protocols for operations on site shall:

1. Communicate that a Red Flag Warning has been issued to operations personnel and any on-site staff,
2. Halt hot work in high-risk locations designated in this Plan,
3. Halt construction/O&M activities within 200 feet of buffer areas for high-fire consequence areas/resources;
4. Ensure that water source or hose to water source pump and nozzle, are accessible to operational activities that may,
5. Drive or park on roads to avoid sparking a fire in grass or brush,
6. Halt construction activities that may increase fire risk,
7. Contact 911 in the event of:
    i. A fire or emergency on-site that cannot be addressed by personnel on-site and requires the assistance of fire or emergency medical personnel;
    ii. A fire ignition on-site that spreads out of the fence line;
    iii. Any fire off-site that does not have emergency responders on site.
        a. To the extent that any on-site personnel can safely assist in extinguishing off-site fires until emergency responders are on site, it is encouraged to do so to assist in the spread of the fire, loss of life, property and damage to the environment.

2.3.3.5 *Emergency Management Plan*

Emergency management will cover response procedures that consider the dry nature of the region and address risks on a seasonal basis. The final Plan will specify communication channels the Certificate Holder intends to pursue with local fire protection agency personnel, for example, an annual or biannual meeting to discuss emergency planning, and invitations to observe any emergency drill conducted at the Facility.

Personnel will be trained on the RACE procedure to implement in the event of a fire start. The RACE procedure includes:

- **Rescue** anyone in danger (if safe to do so);
- **Alarm** – call the control room, who will then determine if 911 should be alerted;
- **Contain** the fire (if safe to do so); and
- **Extinguish** the incipient fire stage (if safe to do so).

The following fire suppression equipment will be stored on-site and be available to personnel on site during the fire season in their vehicles. This equipment shall include, at a minimum:

- Fire Extinguisher: Dry chemical. 2.5 or 2.8 pound. 1A-10B: C U/L rating, properly mounted or secured;
- Pulaski
- Hand Shovel: Round point. 26 to 28 in "D" Handle, blade - 12 inches long and 10 inches wide;
- Collapsible Pail or Backpack Pump: 5-gallon capacity; and
- Drip Can: 5-gallon capacity.

Another safety mitigation measure is to have available onsite during operational activities in times of heightened wildfire risk (designated Fire Season or June to October each year) are water truck(s)/water source, water buffalo, or tank with minimum 500-gallon capacity. The water truck or water supply shall include the following, unless approved by the Department:

A. Pump should be maintained ready to operate and capable to provide a discharge of not less than 20 gallons per minute at 115 psi at pump level. Note: Volume pumps will not produce the necessary pressure to effectively attack a fire start. Pressure pumps are recommended.

B. Water supply shall be a minimum of 300 gallons if a self-propelled engine.

C. Water supply shall be a minimum of 500 gallons if not self-propelled (pond, stream, tank, sump, trailer, etc.)

D. Provide enough hose (500 feet minimum) not less than 3/4" inside diameter to reach areas where power driven machinery has worked.

E. Water supply, pump, and at least 250' of hose with nozzle must be maintained as a connected, operating unit ready for immediate use.

Personnel will receive training on use of suppression equipment. All personnel shall also be equipped with communication equipment capable of reaching the control room from all locations within the Site Boundary.

2.4 Plan Updates and Future Best Management Practices

2.4.1 Plan Updates and Modification

(E) Describe methods the applicant will use to ensure that updates of the plan incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

During operation of the facility the certificate holder shall:

A. Fill out and submit to the Department in the annual report the Operational WMP Compliance Checklist included in this Plan as Attachment 3.

Updates to this Plan will account for changes in local fire protection agency personnel and changes in best practices for minimizing and mitigating fire risk. It is recommended to consult with Jefferson County, Jefferson County Fire District #1, and the Jefferson County Emergency Manager including updates to the Jefferson County NHMP (Jefferson County 2022a) and Jefferson County CWPP (Jefferson County 2022b).

If, after the review of the Plan, a determination is made that no updates are required, an explanation of this determination will be provided in the annual compliance report. If substantive updates are made to the Plan, a copy will be provided to the Oregon Department of Energy with the annual compliance report required under OAR 345-026-008(2).

Certificate Holder will review wildfire risk and update this Plan for the Site Boundary. Evaluation of wildfire risk will be consistent with the requirements of OAR 345-0220115(1) using current data from reputable sources.

The Applicant may consider revisions to this plan at its sole discretion to incorporate future best practices or emerging technology depending on whether the new technology is cost effective and suitable for the site conditions. The Certificate Holder will track the industry groups and applicable design standards outlined in Table 5 to identify future technologies or best practices that could be implemented at the Facility.

This Plan may be amended from time to time by agreement of the certificate holder and the Oregon Energy Facility Siting Council (EFSC) or ODOE, acting within its delegated authority of EFSC. Such amendments may be made without amendment of the site certificate. EFSC authorizes ODOE to agree to amendments to this Plan. ODOE will notify EFSC of all amendments, and EFSC retains the authority to approve, reject, or modify any amendment of this Plan agreed to by ODOE.

Table 5. Resources for Future Best Practices

Reference	Description	Method
American Clean Power	Industry ground that establishes best practices for renewable energy projects.	The Applicant is a member of ACP and participates in best practice development[1].
National Electric Reliability	National Energy Reliability Corporation develops electrical standards for large energy facilities.	The Applicant will follow NERC Standard FAC-003-0 for its vegetation management program of transmission lines[2], or updates to this standard as approved by NERC.
Oregon Specialty Building Codes	Building codes applicable to inhabitable spaces, including the O&M building and the substation enclosure.	Remodeling to the O&M and enclosure structure that requires permits will follow any updates to the OSPC at that time.
APLIC	Avian protection methods for electrical facility reduces fires related to bird/mammal nests on electrical equipment.	The Applicant is a member of APLIC[3]. An operational wildlife monitoring program will inspect for wildlife nesting on facilities that could cause fire, and take actions following applicable laws (e.g., MBTA).

1. Link to ACP Standards & Practices: https://cleanpower.org/resources/types/standards-and-practices/.
2. NERC FAC-003-0: https://www.nerc.com/pa/Stand/Reliability%20Standards/FAC-003-0.pdf.
3. Link to APLIC member organization: https://www.aplic.org/member_websites.php.

3 References

Jefferson County. 2022a. Multi-Jurisdictional Natural Hazard Mitigation Plan. Report for: Jefferson County, Culver, Lake Chinook Fire District, Madras and Metolius. Jefferson County, Oregon: Jeferson County, Central Oregon Intergovernmental Council, https://www.jeffco.net/media/27581

Jefferson County. 2022b. 2022 Jefferson County Community Wildfire Protection Plan. Central Oregon Intergovernmental Council. https://www.jeffco.net/media/26456

Attachment G: Updated Decommissioning Cost Estimate and Assumptions

Estimate Summary
TETRA TECH EC, INC.
Job Code: Madras Solar
Description: Decommissioning Estimate

CBS Position Code	Quantity	UM	Cost Item Description	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
1	1.00	Lump Sum	MADRAS SOLAR RETIREMENT	0.00	Detail	U.S. Dollar	4,098,069.58	4,098,069.58
1.1	1.00	Lump Sum	Equipment & Facilities Mob / Demob	0.20	Detail	U.S. Dollar	88,812.56	88,812.56
1.1.1	1.00	Lump Sum	Equipment Mob	0.00	Detail	U.S. Dollar	40,600.00	40,600.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
UERNTRLG	Rental Equip Transp-Large		4.00	Each	U.S. Dollar	10,000.00	40,000.00
UERNTRSM	Rental Equip Transp-Small		4.00	Each	U.S. Dollar	150.00	600.00

1.1.2	1.00	Lump Sum	Site Facilities	0.00	Detail	U.S. Dollar	2,200.00	2,200.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
UOCONMOB	Connex Box Mob		2.00	Each	U.S. Dollar	300.00	600.00
UOTRLTRN	Trailer Trnsp/Setup/Trdwn		2.00	Each	U.S. Dollar	800.00	1,600.00

1.1.3	3.00	Day	Crew Mob & Site Setup	1.00	Detail	U.S. Dollar	9,202.51	27,607.53

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	480.00	16.00	Each (hourly)	U.S. Dollar	43.52	20,891.66
L010101	OPERATOR	120.00	4.00	Each (hourly)	U.S. Dollar	55.97	6,715.87

1.1.4	2.00	Day	Crew Demob & Site Cleanup	1.00	Detail	U.S. Dollar	9,202.51	18,405.02

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	320.00	16.00	Each (hourly)	U.S. Dollar	43.52	13,927.78
L010101	OPERATOR	80.00	4.00	Each (hourly)	U.S. Dollar	55.97	4,477.25

1.2	1.00	Lump Sum	Project Site Support	0.01	Detail	U.S. Dollar	183,618.79	183,618.79
1.2.1	4.00	Month	Site Facilities	0.00	Detail	U.S. Dollar	1,305.00	5,220.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
URCONNEX	Connex Box		4.00	Month	U.S. Dollar	150.00	600.00
UROFFTRL	Office Trailer -12x60		4.00	Month	U.S. Dollar	500.00	2,000.00
UO1STAID	1st Aid Supplies		4.00	Month	U.S. Dollar	300.00	1,200.00
UOOFFSUP	Office Supplies($/prs/mo)		4.00	Month	U.S. Dollar	55.00	220.00
URPRTAJH	Port-a-John Unit(s) (4)		4.00	Month	U.S. Dollar	300.00	1,200.00

1.2.2	4.00	Month	Field Management	0.05	Detail	U.S. Dollar	44,599.70	178,398.79

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L90FXX02	Field - Proj Superintendent	880.00	1.00	Each (hourly)	U.S. Dollar	83.18	73,200.16
RPUTRK05	F-250 4X4 3/4 TON PICKUP	1,760.00	2.00	Each (hourly)	U.S. Dollar	15.14	26,646.40
L90FXX03	Field - SHSO	880.00	1.00	Each (hourly)	U.S. Dollar	89.26	78,552.23

1.3	1.00	Lump Sum	Substation / Switchyard Retirement	0.04	Detail	U.S. Dollar	192,049.71	192,049.71
1.3.1	1.00	Day	Fence Removal	1.00	Detail	U.S. Dollar	1,429.00	1,429.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L010101	OPERATOR	10.00	1.00	Each (hourly)	U.S. Dollar	55.97	559.66
L060100	GENERAL LABORER	10.00	1.00	Each (hourly)	U.S. Dollar	43.52	435.24
RBACKH09	Deere 710J BACKHOE, 1.62CY	10.00	1.00	Each (hourly)	U.S. Dollar	43.41	434.10

1.3.2	1.00	Each	Transformer Removal	0.17	Detail	U.S. Dollar	96,135.90	96,135.90
1.3.2.1	1.00	Each	Oil Removal & Disposal	1.00	Detail	U.S. Dollar	58,245.49	58,245.49

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CBS Position Code	Quantity	UM	Description	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
			Cost Item					
1.3.2.1.1	1.00	Each	Oil Removal	1.00	Detail	U.S. Dollar	870.49	870.49

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	20.00	2.00	Each (hourly)	U.S. Dollar	43.52	870.49

1.3.2.1.2	14,000.00	Gallon	Oil Disposal	0.00	Detail	U.S. Dollar	4.00	56,000.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USDISPOSAL	Disposal Fee's		56,000.00	Each	U.S. Dollar	1.00	56,000.00

1.3.2.1.3	1.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	1,375.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		1,375.00	Each	U.S. Dollar	1.00	1,375.00

1.3.2.2	1.00	Each	Dismantle & Loadout Transformer	0.20	Detail	U.S. Dollar	37,890.42	37,890.42

1.3.2.2.1	1.00	Each	Dismantle, Cut & Size	0.20	Detail	U.S. Dollar	32,390.42	32,390.42

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	200.00	4.00	Each (hourly)	U.S. Dollar	43.52	8,704.86
L010101	OPERATOR	100.00	2.00	Each (hourly)	U.S. Dollar	55.97	5,596.56
*REXCAV06A	Excav 100K w/ Bucket & Grapple	50.00	1.00	Each (hourly)	U.S. Dollar	150.41	7,520.50
*REXCAV06E	Excav 100K w/ Shear	50.00	1.00	Each (hourly)	U.S. Dollar	211.37	10,568.50

1.3.2.2.2	4.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	5,500.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		5,500.00	Each	U.S. Dollar	1.00	5,500.00

1.3.3	1.00	Each	Remove Control Building	2.00	Detail	U.S. Dollar	2,624.50	2,624.50

1.3.3.1	1.00	Each	Demo	2.00	Detail	U.S. Dollar	1,249.50	1,249.50

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	5.00	1.00	Each (hourly)	U.S. Dollar	43.52	217.62
L010101	OPERATOR	5.00	1.00	Each (hourly)	U.S. Dollar	55.97	279.83
*REXCAV06A	Excav 100K w/ Bucket & Grapple	5.00	1.00	Each (hourly)	U.S. Dollar	150.41	752.05

1.3.3.2	1.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	1,375.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		1,375.00	Each	U.S. Dollar	1.00	1,375.00

1.3.4	2.00	Day	UG Utility & Ground Removal	1.00	Detail	U.S. Dollar	1,429.00	2,858.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L010101	OPERATOR	20.00	1.00	Each (hourly)	U.S. Dollar	55.97	1,119.31
L060100	GENERAL LABORER	20.00	1.00	Each (hourly)	U.S. Dollar	43.52	870.49
RBACKH09	Deere 710J BACKHOE, 1.62CY	20.00	1.00	Each (hourly)	U.S. Dollar	43.41	868.20

1.3.5	600.00	Cubic Yard	Remove Foundations To Subgrade	73.68	Detail	U.S. Dollar	30.78	18,468.03

1.3.5.1	600.00	Cubic Yard	Excavate / Remove Foundation - Various Depth	280.00	Detail	U.S. Dollar	17.60	10,557.97

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	21.43	1.00	Each (hourly)	U.S. Dollar	43.52	932.66
L010101	OPERATOR	42.86	2.00	Each (hourly)	U.S. Dollar	55.97	2,398.52
*REXCAV06C	Excav 100K w/ Hammer	21.43	1.00	Each (hourly)	U.S. Dollar	186.84	4,003.71

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Cost Item								
CBS Position Code	Quantity UM	Description		UM/Day	Cost Source	Currency	Unit Cost	Total Cost
*REXCAV06A	Excav 100K w/ Bucket & Grapple		21.43	1.00 Each (hourly)	U.S. Dollar		150.41	3,223.07
1.3.5.2	600.00 Cubic Yard	Concrete Transport Offsite		100.00	Detail	U.S. Dollar	13.18	7,910.06
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
RDUTRK06	CAT D350D, 18CY-24CY		60.00	1.00 Each (hourly)	U.S. Dollar		86.39	5,183.40
L080940	TEAMSTER		60.00	1.00 Each (hourly)	U.S. Dollar		45.44	2,726.66
1.3.6	1.00 Lump Sum	Misc. Material Disposal		0.00	Detail	U.S. Dollar	2,200.00	2,200.00
1.3.6.1	1.00 Each	Trucking - Per Load		0.00	Detail	U.S. Dollar	1,375.00	1,375.00
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USTRUCKING	Trucking Sub			1,375.00 Each	U.S. Dollar		1.00	1,375.00
1.3.6.2	15.00 Ton	Disposal Cost		0.00	Detail	U.S. Dollar	55.00	825.00
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USDISPOSAL	Disposal Fee's			825.00 Each	U.S. Dollar		1.00	825.00
1.3.7	1.00 Lump Sum	Restore Yard		0.12	Detail	U.S. Dollar	68,334.28	68,334.28
1.3.7.1	4.00 Acre	Backfill / Regrade		2.00	Detail	U.S. Dollar	1,824.72	7,298.87
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER		40.00	2.00 Each (hourly)	U.S. Dollar		43.52	1,740.97
L010101	OPERATOR		40.00	2.00 Each (hourly)	U.S. Dollar		55.97	2,238.62
REXCAV06B	Gradall - Excavator		20.00	1.00 Each (hourly)	U.S. Dollar		95.20	1,904.07
*RDOZER08	CAT D6 LGP Dozer		20.00	1.00 Each (hourly)	U.S. Dollar		70.76	1,415.20
1.3.7.2	2,000.00 Cubic Yard	Vegetative Cover		300.00	Detail	U.S. Dollar	28.52	57,035.41
1.3.7.2.1	2,000.00 Cubic Yard	Topsoil, Delivered		0.00	Detail	U.S. Dollar	20.00	40,000.00
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
IMSOIL	Topsoil			2,000.00 Cubic Yard	U.S. Dollar		20.00	40,000.00
1.3.7.2.2	2,000.00 Cubic Yard	Placement		300.00	Detail	U.S. Dollar	8.52	17,035.41
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L010101	OPERATOR		133.33	2.00 Each (hourly)	U.S. Dollar		55.97	7,462.08
RDOZER08	CAT D6N XL		133.33	2.00 Each (hourly)	U.S. Dollar		71.80	9,573.33
1.3.7.3	4.00 Acre	Re-Seed With Native Vegetation		0.00	Detail	U.S. Dollar	1,000.00	4,000.00
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USLANDSCAPE	Landscape Sub			4.00 Acre	U.S. Dollar		1,000.00	4,000.00
1.4	1.00 Lump Sum	Transmission Line Retirement		0.12	Detail	U.S. Dollar	41,248.99	41,248.99
1.4.1	4.00 Each	Structure and Cable Span Removal		1.00	Detail	U.S. Dollar	4,921.57	19,686.28
1.4.1.1	4.00 Each	Cut / Lower Structure		2.00	Detail	U.S. Dollar	2,050.21	8,200.86
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER		80.00	4.00 Each (hourly)	U.S. Dollar		43.52	3,481.94
L010101	OPERATOR		20.00	1.00 Each (hourly)	U.S. Dollar		55.97	1,119.31
*RXMISC14	MAN LIFT GAS 125ft		20.00	1.00 Each (hourly)	U.S. Dollar		60.32	1,206.40
*RXMISC23	GROVE RT 200 TON		20.00	1.00 Each (hourly)	U.S. Dollar		119.66	2,393.20
1.4.1.2	4.00 Each	Cut / Size Structure & Loadout		2.00	Detail	U.S. Dollar	2,183.86	8,735.43
Resource Code	**Description**		**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER		120.00	6.00 Each (hourly)	U.S. Dollar		43.52	5,222.92

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CBS Position Code	Quantity UM	Description	Cost Item UM/Day	Cost Source	Currency	Unit Cost	Total Cost
L010101	OPERATOR	20.00	1.00 Each (hourly)	U.S. Dollar		55.97	1,119.31
*RXMISC23	GROVE RT 200 TON	20.00	1.00 Each (hourly)	U.S. Dollar		119.66	2,393.20
1.4.1.3	2.00 Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	2,750.00
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USTRUCKING	Trucking Sub		2,750.00 Each	U.S. Dollar		1.00	2,750.00

Notes: **********
Assume 9 ton per steel structure
****

1.4.2	4.00 Each	Remove Foundations To Subgrade	0.98	Detail	U.S. Dollar	5,390.68	21,562.71
1.4.2.1	4.00 Each	Excavate / Remove Foundation - Various Depth	1.00	Detail	U.S. Dollar	5,362.30	21,449.19
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER	80.00	2.00 Each (hourly)	U.S. Dollar		43.52	3,481.94
L010101	OPERATOR	80.00	2.00 Each (hourly)	U.S. Dollar		55.97	4,477.25
*REXCAV06C	Excav 100K w/ Hammer	40.00	1.00 Each (hourly)	U.S. Dollar		186.84	7,473.60
*REXCAV06A	Excav 100K w/ Bucket & Grapple	40.00	1.00 Each (hourly)	U.S. Dollar		150.41	6,016.40
1.4.2.2	6.46 Cubic Yard	Concrete Transport Offsite	75.00	Detail	U.S. Dollar	17.58	113.52
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
RDUTRK06	CAT D350D, 18CY-24CY	0.86	1.00 Each (hourly)	U.S. Dollar		86.39	74.39
L080940	TEAMSTER	0.86	1.00 Each (hourly)	U.S. Dollar		45.44	39.13
1.5	4.00 Mile	Surface Tray & Cable	0.50	Detail	U.S. Dollar	14,330.31	57,321.24
1.5.1	4.00 Mile	Remove Tray & Cable	0.50	Detail	U.S. Dollar	9,830.31	39,321.24
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER	80.00	1.00 Each (hourly)	U.S. Dollar		43.52	3,481.94
L010101	OPERATOR	160.00	2.00 Each (hourly)	U.S. Dollar		55.97	8,954.49
*REXCAV06E	Excav 100K w/ Shear	80.00	1.00 Each (hourly)	U.S. Dollar		211.37	16,909.60
*REXCAV06D	Excav 100K	80.00	1.00 Each (hourly)	U.S. Dollar		124.69	9,975.20
1.5.2	12.00 Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,500.00	18,000.00
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USTRUCKING	Trucking Sub		18,000.00 Each	U.S. Dollar		1.00	18,000.00
1.6	1.00 Lump Sum	DC Storage Retirement	0.03	Detail	U.S. Dollar	193,957.13	193,957.13
1.6.1	63.00 MW	Battery Removal & Disposal	2.42	Detail	U.S. Dollar	2,195.16	138,295.07
1.6.1.1	26.00 Day	Remove Batteries, Load For Transport	1.00	Detail	U.S. Dollar	2,023.17	52,602.47
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
L060100	GENERAL LABORER	1,040.00	4.00 Each (hourly)	U.S. Dollar		43.52	45,265.27
RLIFTS05	JCB 508C, 8,000lbs FRKLFT	260.00	1.00 Each (hourly)	U.S. Dollar		28.22	7,337.20
1.6.1.2	21.00 Each	Transport Batteries	0.00	Detail	U.S. Dollar	1,480.60	31,092.60
1.6.1.2.1	21.00 Each	Roll Off Liners	0.00	Detail	U.S. Dollar	105.60	2,217.60
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
UODCLINER	Rolloff Liner		21.00 Each	U.S. Dollar		105.60	2,217.60
1.6.1.2.2	21.00 Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	28,875.00
Resource Code	**Description**	**Hours**	**Quantity UM**	**Currency**		**Unit Cost**	**Total Cost**
USTRUCKING	Trucking Sub		28,875.00 Each	U.S. Dollar		1.00	28,875.00

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CBS Position Code	Quantity	UM	Description	Cost Item UM/Day	Cost Source	Currency	Unit Cost	Total Cost
1.6.1.3	273.00	Ton	Disposal Fee's	0.00	Detail	U.S. Dollar	200.00	54,600.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USDISPOSAL	Disposal Fee's		54,600.00	Each	U.S. Dollar	1.00	54,600.00

1.6.2	63.00	MW	Structure & Components Removal	13.19	Detail	U.S. Dollar	883.52	55,662.06
1.6.2.1	207.00	Ton	Structure Demo	43.33	Detail	U.S. Dollar	129.41	26,787.06

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
*REXCAV06A	Excav 100K w/ Bucket & Grapple	47.77	1.00	Each (hourly)	U.S. Dollar	150.41	7,184.97
*REXCAV06E	Excav 100K w/ Shear	47.77	1.00	Each (hourly)	U.S. Dollar	211.37	10,096.98
L010101	OPERATOR	95.54	2.00	Each (hourly)	U.S. Dollar	55.97	5,346.87
L060100	GENERAL LABORER	95.54	2.00	Each (hourly)	U.S. Dollar	43.52	4,158.24

1.6.2.2	21.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	28,875.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		28,875.00	Each	U.S. Dollar	1.00	28,875.00

1.7	1.00	Lump Sum	Solar Array Retirement	0.01	Detail	U.S. Dollar	1,957,398.85	1,957,398.85
1.7.1	23,306.00	Linear Feet	Fence Removal	5,124.80	Detail	U.S. Dollar	1.39	32,308.98
1.7.1.1	23,306.00	Linear Feet	Fence Removal	5,124.80	Detail	U.S. Dollar	1.09	25,433.98

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L010101	OPERATOR	136.43	3.00	Each (hourly)	U.S. Dollar	55.97	7,635.42
L060100	GENERAL LABORER	272.86	6.00	Each (hourly)	U.S. Dollar	43.52	11,876.10
RBACKH09	Deere 710J BACKHOE, 1.62CY	136.43	3.00	Each (hourly)	U.S. Dollar	43.41	5,922.46

1.7.1.2	5.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	6,875.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		6,875.00	Each	U.S. Dollar	1.00	6,875.00

1.7.2	19.00	Each	Inverter / Transformer Removal	2.00	Detail	U.S. Dollar	2,253.96	42,825.15
1.7.2.1	19.00	Each	Disconnect Electrical	4.00	Detail	U.S. Dollar	298.34	5,668.55

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L010110	ELECTRCIAN	47.50	1.00	Each (hourly)	U.S. Dollar	60.67	2,882.00
L060100	GENERAL LABORER	47.50	1.00	Each (hourly)	U.S. Dollar	43.52	2,067.40
RPUTRK05	F-250 4X4 3/4 TON PICKUP	47.50	1.00	Each (hourly)	U.S. Dollar	15.14	719.15

1.7.2.2	19.00	Each	Loadout Inverter & Transformer	4.00	Detail	U.S. Dollar	580.61	11,031.60

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER	95.00	2.00	Each (hourly)	U.S. Dollar	43.52	4,134.81
L010101	OPERATOR	47.50	1.00	Each (hourly)	U.S. Dollar	55.97	2,658.37
RHYDCR06	GROVE RT880 73 TON	47.50	1.00	Each (hourly)	U.S. Dollar	89.23	4,238.43

1.7.2.3	19.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	26,125.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		26,125.00	Each	U.S. Dollar	1.00	26,125.00

1.7.3	19.00	Each	Remove Foundations To Subgrade	0.77	Detail	U.S. Dollar	2,954.89	56,142.82

Notes: **********
Assumption: 24x36x1 concrete pad per inverter/ transformer
****

1.7.3.1	1,824.00	Cubic Yard	Excavate / Remove Foundation	280.00	Detail	U.S. Dollar	17.60	32,096.24

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost

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CBS Position Code	Quantity	UM	Description	Cost Item UM/Day	Cost Source	Currency	Unit Cost	Total Cost
L060100	GENERAL LABORER		65.14	1.00 Each (hourly)	U.S. Dollar		43.52	2,835.30
L010101	OPERATOR		130.29	2.00 Each (hourly)	U.S. Dollar		55.97	7,291.52
*REXCAV06C	Excav 100K w/ Hammer		65.14	1.00 Each (hourly)	U.S. Dollar		186.84	12,171.29
*REXCAV06A	Excav 100K w/ Bucket & Grapple		65.14	1.00 Each (hourly)	U.S. Dollar		150.41	9,798.14
1.7.3.2	1,824.00	Cubic Yard	Concrete Transport Offsite	100.00	Detail	U.S. Dollar	13.18	24,046.58

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
RDUTRK06	CAT D350D, 18CY-24CY	182.40	1.00	Each (hourly)	U.S. Dollar	86.39	15,757.54
L080940	TEAMSTER	182.40	1.00	Each (hourly)	U.S. Dollar	45.44	8,289.04

1.7.4	137,000.00	Each	Solar Panel Removal & Disposal	4,800.00	Detail	U.S. Dollar	7.65	1,048,234.26
1.7.4.1	137,000.00	Each	Solar Panel Removal	4,800.00	Detail	U.S. Dollar	3.23	442,309.26

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
RLIFTS05	JCB 508C, 8,000lbs FRKLFT	1,712.50	6.00	Each (hourly)	U.S. Dollar	28.22	48,326.75
L010101	OPERATOR	1,712.50	6.00	Each (hourly)	U.S. Dollar	55.97	95,841.06
L060100	GENERAL LABORER	6,850.00	24.00	Each (hourly)	U.S. Dollar	43.52	298,141.46

Notes: **********
Assumed production: 20 panels per laborer per hour,
Includes packaging and preparing for shipment offsite.
****

1.7.4.2	214.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	294,250.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		294,250.00	Each	U.S. Dollar	1.00	294,250.00

Notes: **********
Assumption: 45,000 lbs per load
****

1.7.4.3	4,795.00	Ton	Disposal Cost	0.00	Detail	U.S. Dollar	65.00	311,675.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USDISPOSAL	Disposal Fee's		311,675.00	Each	U.S. Dollar	1.00	311,675.00

Notes: **********
Assumption: 82,000 modules x 70 lbs each
****

1.7.5	1.00	Lump Sum	Solar Rack (Trackers) & Post Removal	0.07	Detail	U.S. Dollar	777,887.65	777,887.65
1.7.5.1	2,284.00	Each	Solar Rack (Trackers) & Post Removal	160.00	Detail	U.S. Dollar	280.38	640,387.65

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
L010101	OPERATOR	2,284.00	16.00	Each (hourly)	U.S. Dollar	55.97	127,825.38
L060100	GENERAL LABORER	2,284.00	16.00	Each (hourly)	U.S. Dollar	43.52	99,409.50
*REXCAV06A	Excav 100K w/ Bucket & Grapple	1,142.00	8.00	Each (hourly)	U.S. Dollar	150.41	171,768.22
*REXCAV06E	Excav 100K w/ Shear	1,142.00	8.00	Each (hourly)	U.S. Dollar	211.37	241,384.54

Notes: **********
Assumed production: .5 hour per rack per crew. Crew to include
1 excavator w/shear, 1 excavator w/grapple, 2 operators and 2
laborers. Includes post removal and sizing of steel for sale as scrap,
and loadout to haul trucks.
6 piles & 60 modules per rack.
****

1.7.5.2	100.00	Each	Trucking - Per Load	0.00	Detail	U.S. Dollar	1,375.00	137,500.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USTRUCKING	Trucking Sub		137,500.00	Each	U.S. Dollar	1.00	137,500.00

Notes: **********
Assumption: 45,000 lbs per load
****

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CBS Position Code	Quantity	UM	Description	UM/Day	Cost Source	Currency	Unit Cost	Total Cost
			Cost Item					
1.8	1.00	Lump Sum	Site Restoration - Partial Site Seeding	0.08	Detail	U.S. Dollar	113,047.77	113,047.77
1.8.1	5,000.00	Linear Feet	Decompact Roads	2,500.00	Detail	U.S. Dollar	1.01	5,069.02

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
*RDOZER08	CAT D6 LGP Dozer	40.00	2.00	Each (hourly)	U.S. Dollar	70.76	2,830.40
L010101	OPERATOR	40.00	2.00	Each (hourly)	U.S. Dollar	55.97	2,238.62

Notes: **********
Decompaction to include discing and regrading
****

1.8.2	82.00	Acre	Spot Grade Disturbed Areas	8.00	Detail	U.S. Dollar	316.81	25,978.74

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
*RDOZER08	CAT D6 LGP Dozer	205.00	2.00	Each (hourly)	U.S. Dollar	70.76	14,505.80
L010101	OPERATOR	205.00	2.00	Each (hourly)	U.S. Dollar	55.97	11,472.94

Notes: **********
Assumtion: 274 acres total property area.
Assume that 30% of the area distrubed by construction
will be regraded.
****

1.8.3	82.00	Acre	Re-Seed With Native Vegetation - Roads & Areas Disturbed By Construction	0.00	Detail	U.S. Dollar	1,000.00	82,000.00

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USLANDSCAPE	Landscape Sub		82.00	Acre	U.S. Dollar	1,000.00	82,000.00

Notes: **********
Assumtion: 274 acres total property area.
Assume that 30% of the area distrubed by construction
will be re-seeded.
****

1.9	1.00	Lump Sum	Contractor Markups	0.00	Detail	U.S. Dollar	527,320.39	527,320.39
1.9.1	1.00	Lump Sum	Home Office, Project Management (5% Of Cost)	0.00	Detail	U.S. Dollar	141,372.75	141,372.75

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USMARKUP5	5% Markup		2,827,455.00	Each	U.S. Dollar	0.05	141,372.75

1.9.2	1.00	Lump Sum	Contractor OH & Fee (13% Of Cost)	0.00	Detail	U.S. Dollar	385,947.64	385,947.64

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
USMARKUP	13% Markup		2,968,828.00	Each	U.S. Dollar	0.13	385,947.64

1.10	1.00	Lump Sum	ODOE Mandated Contingencies	0.00	Detail	U.S. Dollar	743,294.15	743,294.15
1.10.1	1.00	Lump Sum	20% Contingency on BESS	0.00	Detail	U.S. Dollar	38,791.40	38,791.40

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
UODCBESS	20% ODOE Mandated Contingency		193,957.00	Each	U.S. Dollar	0.20	38,791.40

1.10.2	1.00	Lump Sum	1% Performance Bond	0.00	Detail	U.S. Dollar	33,547.75	33,547.75

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
UODOE1	ODOE 1% Markup		3,354,775.00	Each	U.S. Dollar	0.01	33,547.75

1.10.3	1.00	Lump Sum	10% Administrative and Project Management	0.00	Detail	U.S. Dollar	335,477.50	335,477.50

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost
UODOE2	ODOE 10% Markup		3,354,775.00	Each	U.S. Dollar	0.10	335,477.50

1.10.4	1.00	Lump Sum	10% Future Development Contingency	0.00	Detail	U.S. Dollar	335,477.50	335,477.50

Resource Code	Description	Hours	Quantity	UM	Currency	Unit Cost	Total Cost

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CBS Position Code	Quantity	UM	Description	Cost Item UM/Day	Cost Source	Currency	Unit Cost	Total Cost
UODOE2	ODOE 10% Markup			3,354,775.00 Each	U.S. Dollar		0.10	335,477.50
Report Total:								4,098,069.58

Category	Total
Labor	1,004,666.05
Rented Equipment	674,376.39
Supplies	3,637.60
Materials	40,000.00
Subcontract	1,629,895.39
ODCs	745,494.15

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