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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of: : Docket Number
CLACKAMAS RIVER HYDROELECTRIC PROJECT : P-2195-011
- - - - - x

2 - World Trade Center
Plaza Room, Ground Floor
121 S.W. Salmon Street
Portland, Oregon

Friday, July 28, 2006

The above-entitled matter came on for public
meeting, pursuant to notice, at 9:45 a.m.

BEFORE:
JOHN BLAIR, FERC

P R O C E E D I N G S

(9:45 a.m.)

MR. BLAIR: Let's go ahead and get started.

Good morning. My name is John Blair. I'm with the Federal Energy Regulatory Commission. I want to welcome you to this session to discuss the Draft Environmental Impact Statement for the Clackamas Hydroelectric Project.

This morning I was sitting in the hotel room, the Four Point Sheraton overlooking the river, and I was thinking back. We started this process almost eight years ago. I think it was 1998 that Julie Keil and Steve Padula came to Washington and they wanted to discuss the licensing of the Willamette, the Clackamas, the Bull Run. And they wanted to use the alternative licensing process, specifically what we call the third party contract process for Clackamas.

And then in 1999 they elected to go forward with the third-party contract and they selected -- I think fortunately for you all -- ERM Corporation has a very good track record with FERC on doing environmental documents for FERC in the past. They selected ERM to assist us or assist them in preparation of the environmental document that you have before you today.

And I thought back. You know, since 1998 we have had a president die, we've had a president impeached, we had

1 terrorist attacks, we've gone to war, we've had John Eschler
2 break his leg. But we're all here today I think for a
3 common reason: to go forward with the licensing of the
4 Clackamas Hydroelectric Project.

5 And we sent out to you June 18 -- the official
6 EPA notice date was June 23rd -- the DEIS, both in disk form
7 and also in hard copy form and asking for public comments
8 within 45 days. And then all hell broke loose. 45 days was
9 not quite enough.

10 Yesterday we -- the day before yesterday we
11 issued a notice but also sent out a letter announcing a 15-
12 day extension. So comments are now due August the 22nd.
13 And that should give you plenty of time to tidy up your
14 comments, put into any framework any of the comments you
15 hear today, and file with the FERC. It will give you
16 actually a total of 67 days for a comment period.

17 And given the fact that most of you have been
18 involved in this process from day one and are very familiar
19 with not only the content of the PEIS but also the
20 settlement agreement, we feel that that's ample time to
21 respond to our request for comments.

22 The purpose of today's meeting again is to get
23 public comment, any clarification you want to make, and how
24 we interpret the results.

25 But before we do that I want to get some

1 introductions.

2 Again, I'm John Blair. And to my immediate left
3 is Julia Tims, representing ERM. Julia and her team are
4 specialists who put together the DEIS.

5 Nick Jayjack from FERC is one of our reviewers
6 and had intimate input into the DEIS, especially the
7 aquatics portion of the environmental document. As you may
8 know, Nick has worked on other projects with PGE,
9 specifically Pelton. I worked on Willamette -- I worked on
10 the Willamette order, as did Nick have some input. So we're
11 fairly familiar with the concerns and issues of the
12 audience.

13 And in the back we have -- Jim, raise your hand -
14 - Jim Hastreiter, who has been working with the settlement
15 group to sort of guide you along on what FERC might or might
16 not do in the way of a settlement. And Jim, we appreciate
17 your work in working with me.

18 Now that's us at FERC and ERM -- Oh, lastly --
19 I'm sorry -- our stenographer, Anne Bloom. She will be
20 recording all the comments today. If you have written
21 comments in addition to any verbal comments and you would
22 like to file them as part of the record for today in order
23 to complete your statement, if you would give Anne a copy of
24 your written comments.

25 It will all be on the record so that there's no

1 misinterpretation of what was said or not said in this
2 public meeting.

3 All right. Let's see who we have in the
4 audience. We'll start with you, sir. If you would, stand
5 up and give us your name and who you're with.

6 MR. SMOOT: My name is Tom Smoot. I'm with
7 Northwest Steelheaders.

8 MS. DAY: Michelle Day, National Marine Fisheries
9 Service.

10 MS. JUROTT: Melissa Jurott, also National Marine
11 Fisheries Service.

12 MR. BLAIR: I'm sorry, your name again?

13 MS. JUROTT: Melissa Jurott.

14 MR. FONTECCHIO: Chris Fontecchio with NOAA
15 General Counsel.

16 MS. GRAY: Ann Gray, U.S. Fish & Wildlife
17 Service.

18 MR. LARSEN: Gary Larsen with the U.S. Forest
19 Service.

20 MR. COREY: Carl Corey with the Forest Service.

21 MS. SOMERS: Jocelyn Somers, Office of General
22 Counsel for the U.S. Department of Agriculture, representing
23 Forest Service.

24 MR. SHIVELY: I'm Dan Shively, also with the
25 Forest Service.

1 MS. ATHMAN: Connie Athman, U.S. Forest Service.
2 MR. MARK: Tom Mark, consultant to PG&E.
3 MS. KEIL: Julie Keil, Portland General Electric.
4 MS. SWIFT: Brett Swift, American Rivers.
5 MS. MILLER: Kate Miller, Trout Unlimited.
6 MS. NEWELL: Avis Newell, Oregon DEQ.
7 MR. CRAMER: Doug Cramer, Portland General
8 Electric.
9 MR. ELLIOTT: Mike Elliott, Water Providers.
10 MR. PENHOLLOW: Clay Penhollow, Confederated
11 Tribes of the Warm Springs Reservation of Oregon.
12 MS. IVERSON: Nicki Iverson, Clackamas Water
13 Providers.
14 MS. MC GINNIS: Cheryl McGinnis, Clackamas River
15 Basin Council.
16 MR. KOHANEK: Craig Kohanek, Oregon Water
17 Resources Department.
18 MS. GRAINEY: Mary Graine, Oregon Water
19 Resources Department.
20 MR. ZANNER: John Zanner, Oregon Department of
21 Fish & Wildlife.
22 MR. O'KEEFE: Thomas O'Keefe, American
23 Whitewater.
24 MR. CONCANNON: Greg Concannon, PGE.
25 MR. ERNST: Norm Ernst, PGE.

1 MR. NICHOLS: Steve Nichols, PGE.

2 MR. DENTEL: Tony Dentel, PGE.

3 MR. LAWRENCE: Scot Lawrence, PGE.

4 MR. ESLEN: John Eslen, Portland General
5 Electric.

6 MR. VALIN: Hugo Valin, student.

7 MR. BLAIR: Your name one more time, please?

8 MR. VALIN: Hugo Valin.

9 MR. BLAIR: Representing?

10 MR. VALIN: Representing -- I am a student of
11 environmental policy.

12 MR. BLAIR: Thank you very much.

13 (Slide.)

14 Okay. Let's go over a little protocol, if we
15 may. First of all, no cell phones. No cell phones, please.

16 Second of all, for our stenographer to get the
17 proper citation down, if you would state your name clearly -
18 - and if it's an odd spelling, spell it -- and then make
19 your comment. Now to help us as we go back through the
20 Court Reporter report, to help us discern what the issue is,
21 if you can succinctly state what your issue is and then your
22 comment that would be helpful as opposed to just starting in
23 and we have to ferret through what really -- what is the
24 point trying to be made.

25 So if you would state your name, if it's a

1 difficult spelling spell it, tell us who you represent if
2 you like, and then what is the issue, what is the essence of
3 what it is you're about to comment. That would be very
4 helpful in us trying to ferret through the comments and then
5 incorporate those in responses in our FEIS.

6 (Slide.)

7 Again today's purpose: We want to get public
8 comment on the DEIS. And then we'll go into what our next
9 steps are a little bit later in the licensing process. We
10 want to hear comments.

11 There's a saying in Washington, if you get a
12 piece of legislation and everyone's happy with it then there
13 must be something wrong with it. Okay? And so we don't
14 expect that everyone is going to embrace our DEIS en toto.
15 So we need to find out what your concerns are. If we missed
16 a point or made a mistake then we need to know that so that
17 we can correct it so that when we come out with the final
18 environmental impact statement that we can be certain, at
19 least to the best of our ability, we have tried to address
20 all comments accurately in our environmental assessment.

21 Again, this is an environmental assessment to
22 determine the project's environmental effects. And this
23 becomes the base for us to write our license order,
24 including the settlement provisions that you all have filed
25 back in 2006.

1 (Slide.)

2 Let's see. So the next step, we're going to
3 summarize -- just go back and make sure everyone's on the
4 same page -- the project, review some of the major findings,
5 and then start collecting our comments.

6 With that I'm going to turn it over to Julia
7 Tims, who's going to go back over -- some of it will be old
8 hat, but this way everyone's on the same page. And then
9 she'll just get into specifics of what we included and what
10 we did not include.

11 And then after we're finished with our
12 presentations then we can go into Q and A. But please,
13 let's hold the questions until we finish our presentations.
14 I know the Portland General Electric also has a PowerPoint
15 presentation and we'll figure out where to factor that in
16 the mix. Okay?

17 MS. TIMS: Good morning, everyone.

18 (Slide.)

19 I recognize most of the faces in this room. So
20 we're not going to spend a lot of time going over specifics
21 of the project and the history. But I just wanted to give a
22 very brief overview.

23 Obviously today we're here to talk about the
24 Clackamas Project, a 173 megawatt project located in the
25 Clackamas River Basin in Clackamas County. The project

1 consists of four developments: the Oak Grove, the North
2 Fork, Faraday and River Mill, with which all of you are
3 intimately familiar, I'm sure.

4 (Slide.)

5 A brief summary of the hydro licensing process.
6 Basically the Federal Power Act is the act under which FERC
7 reviews licenses for hydroelectric facilities. The FERC
8 issues licenses for facilities with a 30- to 50-year license
9 term. And the current license for the Clackamas Project
10 expires on August 31st, 2006.

11 And the hydroelectric relicensing process
12 requires a full review of environmental and economic issues.
13 And that's done through the Environmental Impact Statement.
14 As John described, FERC issued the Draft Environmental
15 Impact Statement for the project in June of 2006.

16 And the involved parties in the relicensing
17 process of course include FERC -- the lead federal agency in
18 relicensing -- and federal and state resource agencies,
19 Native American Tribes, various advocacy groups, non-
20 governmental organizations, and members of the general
21 public.

22 (Slide.)

23 So milestones to date, to summarize, as John
24 said, we started this project or this process back in 1998-
25 1999. In March of '99 specifically PGE initiated the

1 alternative licensing process and formed several technical
2 working groups to identify and address resource-specific
3 issues relating to the project.

4 And then in January and February of 2001 FERC
5 issued the scoping document -- the first scoping document
6 for the project and held public scoping meetings. And that
7 scoping document identified the preliminary issues that were
8 of concern to the public and that would be addressed in the
9 Draft Environmental Impact Statement.

10 In April 2003 FERC issued Scoping Document Two,
11 which was based on feedback from the public meeting in
12 February 2001.

13 And in April 2004 PGE formed a settlement working
14 group. And that settlement working group would be involved
15 in the settlement process to reach a settlement agreement
16 for the project.

17 In August 2004 PGE filed its final license
18 application with the Federal Energy Regulatory Commission.
19 And in October 2004 FERC accepted the application and filed
20 an acceptance notice for that application, which officially
21 began the DEIS project.

22 (Slide.)

23 In March of 2005 FERC declared the license
24 application ready for environmental analysis. And in July
25 of 2005 agencies filed their prescriptions, terms,

1 conditions, and recommendations for the project.

2 In March of 2006 PGE filed the settlement
3 agreement, which many of you are parties to.

4 Then on June 23rd, 2006 FERC issued the DEIS,
5 initiated the 45-day public comment period, which actually
6 was supposed to end August 7th but then on July 17th PGE
7 filed a request to extend the public comment period and FERC
8 has extended the comment period 15 days, which now ends
9 August 22nd, 2006.

10 So that takes us up to today. And I'm just going
11 to go over very briefly a summary of the settlement
12 agreement.

13 (Slide.)

14 And I know that PGE is going to be giving a
15 presentation following this which I'm sure will go into a
16 little bit more detail

17 But on March 29, 2006 PGE filed the settlement
18 agreement that was signed by 32 parties, including federal,
19 state and local government agencies, tribes and NGOs. The
20 settlement agreement contains 55 proposed license articles
21 that describe how PGE would operate the project and PGE's
22 responsibilities for certain environmental measures.

23 The settlement agreement includes the agencies'
24 prescriptions, terms, conditions and recommendations.

25 The settlement agreement includes measures

1 primarily associated with erosion, sediment control,
2 geomorphologic processes, water quality and quantity, in-
3 stream flows and ramping rates, lake levels, fish habitat
4 and fish passage, aquatic connectivity, vegetation and weed
5 management, wetland and riparian habitats, wildlife
6 connectivity and entrapment, threatened and endangered
7 species, cultural resources, recreation facilities and
8 management, and operations compliance.

9 (Slide.)

10 The DEIS that was issued in June of 2006
11 evaluates the potential natural resource benefits, the
12 environmental effects and the development costs associated
13 with relicensing the Clackamas Project.

14 And for those of you that have not reviewed the
15 DEIS to date or do not have a copy, it's available on FERC's
16 website for download at www.ferc.gov. And we also have
17 compact disks here at the table that contain copies of the
18 DEIS.

19 (Slide.)

20 And just to talk a little bit about the contents
21 of the DEIS and how it's set up, it includes the proposed
22 action, which was the settlement agreement, the staff
23 alternative, which is the proposed action or settlement
24 agreement with modifications recommended by FERC staff, and
25 then the no-action alternative, which is, of course, the

1 baseline, no changes or enhancements to the current
2 facilities or operation.

3 And this no-action alternative establishes the
4 environmental conditions for comparison with the proposed
5 action and the staff alternative. It basically serves as
6 the baseline for comparison with the action alternatives,
7 the settlement agreement and the staff alternative.

8 (Slide.)

9 And in Chapter 5 of the DEIS, that portion of the
10 document includes FERC staff's assessment of the proposed
11 action or settlement agreement and the alternatives, and
12 identifies the recommendation of FERC for relicensing the
13 project, the recommended alternative. This portion of the
14 DEIS determines the proposed articles that should or should
15 not be included as provisions of any new license for the
16 project and it identifies additional articles if necessary
17 to ensure compliance with applicable government regulations.

18 (Slide)

19 And the FERC recommended the staff alternative as
20 the preferred option for relicensing the project. And the
21 staff alternative includes the articles proposed in the
22 settlement agreement with some exclusions or modifications,
23 and additional FERC recommended measures.

24 (Slide.)

25 And specifically the staff alternative does not

1 include measures that provide funds for non-project
2 facilities. It does not include measures that fund
3 unidentified future measures, or fund agency administrative
4 activities, or fund third-parties to perform proposed
5 measures.

6 Also the staff alternative does not include
7 measures that would involve implementation of unidentified
8 or unspecified measures, or include implementation of
9 measures at non-project facilities, or those measures that
10 might require compliance with future standards that have not
11 been developed.

12 And specifically I'm going to list the measures
13 that were proposed in the settlement agreement that are not
14 included in the staff alternative. And I'm going to go
15 through the list and we can talk about these during the
16 comment period after I go through the list.

17 (Slide.)

18 Implementing unspecified pulse flows at Lake
19 Harriett;

20 Providing funding to the U.S. Forest Service to
21 implement Oak Grove fish improvements or enhancements;

22 Providing funds for unidentified measures other
23 than weirs for enhancing cutthroat trout populations;

24 The studies to evaluate the need to transfer
25 cutthroat trout upstream of Timothy Lake Dam for genetic

1 exchange;

2 Implementing unidentified C&D measures in tiered

3 decision-making for downstream fish passage;

4 Implementing unidentified measures related to

5 upstream fish passage studies;

6 Complying with future juvenile lamprey passage

7 standards;

8 Conducting juvenile lamprey guidance efficiency

9 studies;

10 Providing Clackamas River hatchery funding;

11 (Slide.)

12 Establishing a mitigation enhancement fund;

13 Providing funds for maintaining bird nest boxes;

14 Developing funding and implementing additional

15 wildlife measures;

16 Enhancing wetlands in adjacent river basin;

17 Providing funds to upgrade Clackamas Lake

18 campground and provide Lake Harriett enhancements;

19 Provide funds for local whitewater boating

20 activities and determine the feasibility of constructing

21 play boating features;

22 Provide improved river access sites in the Three

23 Lynx reach;

24 Conducting feasibility studies for non-project

25 recreation facilities;

1 Providing a public roads account; and
2 Providing funds to U.S. Forest Service and Oregon
3 State Marine Board for law enforcement in the project area.

4 (Slide.)

5 Those are the measures that FERC did not include
6 as part of the staff alternative. And FERC also recommended
7 several additional measures -- specifically seven additional
8 measures, including:

9 Identifying in the Operations Compliance Plan a
10 priority between a minimum Timothy Lake elevation of 3189
11 feet at any time before the day after Labor Day and proposed
12 minimum flows below Timothy Lake;

13 Undertaking measures necessary to ensure that the
14 proposed stranding evaluation downstream of River Mill Dam
15 is completed notwithstanding the proposed limitation on
16 expenditures for the study;

17 Undertaking measures necessary to ensure that the
18 proposed upgrade of Forest Road 5700 is completed, again
19 notwithstanding the proposed limitation on expenditures for
20 the upgrade;

21 In consultation with the U.S. Forest Service,
22 include with its Form 80 recreation report any proposals for
23 recreation enhancement at Lake Harriett;

24 Enclosing within the project boundary three
25 improved recreation sites in the Three Lynx reach;

1 Fully implement the proposed pulse flow
2 evaluation and interim pulse flow protocol if that is not
3 completed under the existing license; and finally

4 Filing for Commission approval any proposed
5 interim and final pulse flows to be released downstream of
6 the Faraday diversion dam.

7 Again, these are seven additional measures that
8 are in addition to the proposed action or settlement
9 agreement that FERC recommends.

10 (Slide.)

11 So I'd like to open the floor for some questions
12 or comments.

13 Or, Julie, would you like to come up and present
14 your presentation?

15 MS. KEIL: Julia, only if people don't have
16 questions of you guys because what I put on the PowerPoint
17 is more or less PGE's formal presentation.

18 MS. TIMS: Okay.

19 MS. KEIL: So I think you should take questions.

20 MS. TIMS: Okay.

21 MR. BLAIR: In the back. Please state your name.

22 MS. GRAINEY: I'm Mary Graineey with the Oregon
23 Water Resources Department.

24 And as you mentioned, a lot of months and years
25 of effort have gone into this. And the group has presented

1 a settlement agreement. For better or worse, we've got some
2 working relationships with all of the parties. And when I
3 see what you've presented here in terms of a laundry list of
4 measures and compare that to the settlement agreement
5 laundry list of measures, I think we're missing a key point
6 or difference between the settlement agreement and the staff
7 alternative. And that is the working relationships that are
8 ongoing in the decision-making process that was built into
9 the settlement agreement.

10 And parts of the differences are between when the
11 folks in the negotiation session said we don't have all the
12 answers today but we're going to do a measure and we're
13 going to evaluate it and then we're to step on to the next
14 point, that's what we call the tiered decision-making. And
15 I didn't see any discussion about that.

16 But when you look at the list of measures that
17 say the future measures, you know, that are coming at the
18 next step in the evaluation are out, it seems like the
19 settlement agreement is being dismantled. And it seems like
20 that is not within the spirit of what FERC put forth as an
21 alternative, you know, to bring forth a settlement
22 agreement. There may be other folks that have similar kind
23 of concerns that you're going to hear today.

24 So I'd just like to hear your presentation about
25 what is tiered decision-making from your perspective and how

1 does it fit into the licensing process.

2 MR. BLAIR: Well, let me make a brief statement.
3 And I'll let Nick Jayjack make a comment.

4 Early on in the planning study phase I remember
5 distinctly Jim Teitt making the statement -- and I echoed
6 'that's correct' -- and I know that through the work that
7 Portland General Electric has done on other projects,
8 Pelton, Willamette, et cetera, and through the assistance of
9 Jim Hastreiter working with the settlement agreement, early
10 on we stated that there has to be a connection between
11 what's being recommended and the project. There has to be a
12 nexus, as we term it.

13 FERC has to be able to have jurisdiction or
14 authority to enforce any item. It has to be definitive in
15 terms of what it is that's being done so that we in fact can
16 enforce it. And it has to be in the public interest.

17 And as we went through the laundry list, as I was
18 looking on the screen, at least two-thirds of those items
19 are non-definitive. A lot of it was funding for a non-
20 determinant or slush funds for non-determinant. And we have
21 no way of enforcing something when we don't know what it is
22 we're enforcing. Okay?

23 So those are early-on guidelines. Nothing has
24 changed in those guidelines. On day one we made that
25 statement. So I don't think we're dismantling it. We're

1 this case the Roanoke Rapids
2 Gaston settlement -- and the
3 corresponding license articles
4 appear to call for activities
5 related to project impacts and
6 purposes. It is our strong
7 preference that measures requiring
8 a license be clearly tied to the
9 project at issue. We're sometimes
10 troubled by settlements which
11 require measures such as general
12 funds to be used for unspecified
13 measures that are not tied to
14 either project impacts or
15 purposes. In addition, we prefer
16 measures requiring specific
17 actions --

18 The Commission gave the example of a specific
19 action: The licensee shall construct a fish hatchery.

20 -- to those mandating general actions whose
21 effects are unclear.

22 And here the Commission gave the example of: The
23 licensee shall contribute \$100,000 to support fishery
24 enhancements.

25 It is much easier for us to

1 conclude that a project proposal
2 based on specific measures is in
3 the public interest as opposed to
4 one made up in large part of
5 measures whose impacts we cannot
6 truly assess. We also note that
7 we have a preference for
8 mitigation measures that are
9 located in the vicinity of the
10 project unless this is impractical
11 or unless substantially increased
12 overall project benefits can be
13 realized from adopting offsite
14 measures.

15 End quote. That's paragraph 11 from the Gaston
16 Order.

17 So staff has been using that as guidance from the
18 Commission in assessing projects where settlement agreements
19 have been filed. And I believe that's what John had touched
20 on.

21 As far as the tiered approach and how we treat
22 that, I'm not quite sure how to answer that generally. What
23 the Commission has said and what staff has recommended in
24 environmental documents with regard to that has been that we
25 can go with a tiered or adaptive management approach if we

1 know what the bounds are.

2 So the Commission in the past has given the
3 example of adaptive management approach for developing a
4 minimum flow protocol for a bypass reach.

5 We have seen proposals where the parties have
6 told us that we're going to look at flows between 100 cfs,
7 for example, and 400 cfs in increments of 100 cfs per year
8 for four or five years, whatever it comes out to. And the
9 Commission has said that that's okay because -- it would be
10 okay for them to look at that and propose a flow based on
11 the studies after five years without prior Commission
12 approval and without the Commission having to re-look at
13 what the effects of that would be because the Commission --
14 the staff and the Commission were able to assess what those
15 benefits and costs were at the time the license went out.

16 But the Commission has said that if the parties
17 were to come back with a flow under 100 cfs in that sample,
18 or over 400 cfs, well, that would not be okay as far as, you
19 know, the Commission giving pre-approval for that because
20 then staff and the Commission would not have had the ability
21 to have been able to assess the benefit and costs of those
22 flows outside of that range.

23 So that type of approach the Commission has said
24 is okay.

25 What the Commission has said is not okay --

1 another example would be a tiered approach where the parties
2 have said, okay, we're going to go and we're going to do
3 measures 'x' and 'y,' and we're going to study that and then
4 we're going to provide a report to the Commission as to what
5 those results are and then we're going to do measures 'a'
6 and 'b' after that, or some other measures.

7 It's the 'or some other measures' part that gives
8 us heartache because we don't know what those measures are;
9 we can't assess the benefits and costs of them. So there,
10 by having language like that you've now taken the bounds out
11 and pretty much opened it up to any measure. It's not a
12 bounded tiered decision-making approach.

13 I think that's about as specific as I can get
14 without you mentioning a specific proposal or a specific
15 instance. That's generally how we view this tiered or
16 adaptive management approach.

17 Other questions?

18 Yes, ma'am.

19 MS. GRAINEY: To follow up on that, so if our
20 boundary is a survival standard for fish and we're looking
21 at certain measures now but we want the option to study the
22 results and then look for the next cost-benefit -- you know,
23 it could be a small measure or it could be a big measure.
24 And the choice that FERC seems to be telling us is we have
25 to identify the big measures.

1 We can tell what an expensive solution would be,
2 but we want the option of being able to look for other less
3 costly measures. And what FERC is saying is you can't do
4 that. You can't have that flexibility.

5 Or the other thing that I'm misinterpreting here,
6 probably, is that we could agree to do those things but we
7 shouldn't go back to FERC. FERC doesn't want to know about
8 it because you do it outside of the contract. And I don't
9 think that's what FERC really wants to say.

10 So, you know, we've tried to build in a process
11 for coming back to FERC, when those measures are identified,
12 to come back for approval. And yet we were told that's too
13 much in the future.

14 I guess I need to understand.

15 MR. JAYJACK: I guess what we're saying is that
16 it's very difficult for us to determine -- make a public
17 interest determination when we don't know exactly what that
18 future measure would be because it could be, like you said,
19 of a very small measure or it could be a very large measure.
20 And if we don't know what the measure is we can't assure
21 what the benefits and the costs of that measure would be and
22 how it would affect other resources. And so to give the
23 kind of flexibility where there's no bounds, that puts us in
24 a situation where we can't make that public interest
25 determination.

1 You know, the language where the Federal Power
2 Act says, you know, we have to issue a license that's in our
3 judgment best adapted to a comprehensive plan for the basin.
4 In other words, a license that's in the public interest.
5 And to not be able to identify those measures and not know
6 what those measures are and truly know the ultimate benefits
7 and, just as importantly, what the costs would be, it's very
8 difficult for us to make that public interest determination.

9 So what we have done in the past is we've advised
10 parties to, if they come up with these measures, they could
11 at the time they file a study report on, let's say, the
12 first tier, make recommendations for the next step. And
13 what the Commission would do then is consider those
14 recommendations. And then if the measure is very minor and
15 doesn't involve a long-term change to project operations or
16 facilities they might go ahead and just approve that next
17 step at that point.

18 If it's a big change to project operations and
19 facilities, well, then the Commission has to basically go
20 through an amendment process. And we may have to redo our
21 environmental analysis of that if it wasn't considered in
22 the EIS or the EA at the time that the licensing decision
23 was made.

24 So it's still a tiered decision-making approach.
25 It's just if we don't what the measure is we can't guarantee

1 or require an unidentified measure somewhere out in the
2 future. It has to go through a process.

3 The other thing, what we've done is -- of course,
4 you're all familiar with the standard Article 15, which is a
5 re-opener, which allows the Commission to re-open a license
6 or reserves the Commission's right to re-open a license to
7 address future measures, essentially. And so, you know, we
8 do recognize that adaptive management takes place. And that
9 is another vehicle that has been established. And I think
10 that shows that, you know, we do recognize that.

11 MR. BLAIR: Can I get your name, please?

12 MR. FONTECCHIO: Chris Fontecchio, NOAA General
13 Counsel.

14 I just want to ask a little bit more about the
15 unidentified tiered measures.

16 Now I understand that it is difficult for the
17 Commission to sort of reach the same comfort level with the
18 lack of specificity that we have where we've left things
19 open to sort of adaptive management because we've all been
20 in the room talking to each other about what we envision
21 taking place for hours on end.

22 That said, you call the sieve measures
23 unidentified. But we have identified with some level of
24 specificity what those are. And I guess my question is:

25 How much more would have been required in

1 identifying those measures before FERC would be able to be
2 comfortable with them?

3 And we have a list there that seemed somewhat
4 specific. And it may be less specific than things that are
5 being ordered to be done right away. But in our view they
6 are not unidentified.

7 MS. SOMERS: I'd just like to add something.

8 MR. BLAIR: Sure.

9 MS. SOMERS: I'm Jocelyn Somers with the Office
10 of General Counsel with the Forest Service.

11 And I think this whole tiered decision-making
12 process includes the Commission. And the way it appears,
13 because we would present any identified, if you will, any
14 change would be presented for Commission review and
15 approval. And it's almost as if you're saying we don't want
16 to be involved; we don't want to have a part in the process,
17 because we build you in and obviously these things could not
18 go forward without Commission approval.

19 Now, you know, it just gives us the impression
20 you just want to wash your hands of us and walk away once
21 you issue the license order. We don't want that from you.
22 We need your involvement and participation.

23 This whole process anticipates your involvement
24 and participation. And we would like you to consider being
25 part of this process.

1 So I just want to add that, yes, we have a whole
2 list. We have a process. And you're involved and would
3 participate in that process without going into the formal
4 necessity of re-opening a license, which is, as you are well
5 aware, a very significant and very rarely acted-upon
6 process.

7 MR. BLAIR: Let me make one comment.

8 Nick made the point, you know, we need to make a
9 call in terms of the public interest. Obviously, as you all
10 representing NGO groups, public agencies, federal agencies,
11 et cetera, but you don't represent the rate-holder. We have
12 to make a balancing call between the environmental effects
13 and the effects on -- in the public interest, okay?

14 And my point is that if we keep this open in
15 terms of the process then you all as a group in your
16 settlement may have in your own mind how this tier process
17 is going to work. But in terms of actual enforcement or
18 evaluation of some unknown in the future, it becomes more
19 difficult for us to make that assessment.

20 To make a report and then submit it to FERC and
21 say, 'Please bless this' is not something we can do.

22 MS. KEIL: Julie Keil, Portland General Electric.

23 I guess, John, I'm worried a little bit about
24 your representation that no one at the table represented my
25 customers. That's my job. That's PGE staff's job; and that

1 the interest that the settlement party worked very hard to
2 take into account when they drafted this.

3 So I think we need to be careful about saying
4 that FERC is restructuring this settlement and rebalancing
5 it because no one's representing the rate-payers. That just
6 plain isn't true.

7 MR. BLAIR: Okay.

8 MR. JAYJACK: Let me address Chris's comment
9 first.

10 I do recall that the C&D measures were listed.
11 But what accompanied those measures was I think, to quote
12 the exact phrase, 'or other measures,' or something along
13 those lines.

14 Had that not been there, had that provision not
15 be there then we have a known. We have everything as known.
16 We know what the scope of the measures would be, and then we
17 would be okay with that. But it was the fact that it says
18 something to the effect that it would be this list of
19 measures or other measures, as we understood it. That was
20 our interpretation of what the settlement was saying. Well,
21 that now creates an unbounded situation and we see 'or other
22 measures' and then we begin to wonder, well, what are those
23 other measures. How do we deal with that.

24 In response to Jocelyn's comment, it's not a
25 matter of us trying to wash our hands of this. That's not

1 what we're trying to do.

2 What we're trying to say is that we want to
3 address these issues but we can only pre-approve -- or
4 approve that which we know. And what we think we've done
5 here by recommending the A and B measures, as well as the
6 proposal to submit a report along with recommendations for
7 the next step, is what we've said is like, okay, we know the
8 A and B measures, we know what the benefits and cost of
9 those are. We can go ahead and recommend those. We've
10 disclosed what the benefits and costs are in the EIS. We
11 can back-up the recommendation.

12 What we envision will happen is those measures
13 will be implemented, the studies will take place; a study
14 report will come back to us. Within that study report will
15 be the results of the studies, of course, along with
16 proposals for the next step. And at that time we would look
17 at what those proposals are and go from there. We would
18 also look at, you know, any comments on those proposals.
19 And then the Commission staff would go through the process
20 of making a decision on the next step.

21 What we're saying is we're very reluctant to put
22 provisions in the license now that are very unbounded and
23 open-ended because, you know, as we see it what we're doing
24 is approving everything under the sun, in essence. Our
25 concern is that someone could come back and say, you know,

1 look, you said that it could be 'or any other measures.'
2 You said it would be okay. And we're reluctant to do that.

3 If ten, fifteen years down the road there's a
4 different group of people working on this case, that issue
5 will come up. And we will have pre-approved everything
6 under the sun by saying, well, it's okay to come back with
7 any other measure, that's where our concern lies.

8 So to be diligent in deciding what the public
9 interest is we have to know what those measures are and be
10 able to assess the benefits and costs to come up with, you
11 know, what the Federal Power Act says, which is that a
12 license is best adapted to a comprehensive plan for the
13 river basin.

14 MR. BLAIR: Gary Larsen had a comment here.

15 Gary.

16 MR. LARSEN: Gary Larson, Forest Service.

17 I actually have just a brief comment and then a
18 question on a procedure.

19 My brief comment is that I would suggest that the
20 staff's assessment of the unboundedness and open-endedness
21 of this measures is in error.

22 Secondly, I would suggest that dismissing an
23 entire article because there is a word or few in it that
24 either, A, is not understood or, B, expands the notion --
25 potentially expands the notion, I think that also is in

1 error. So that's my comment.

2 My question about procedure is I do have detailed
3 comments I'd like to make. And my question is when in the
4 process would you like that to happen? Would you like that
5 now or would you like that later during the public comment
6 period?

7 MR. BLAIR: Let me ask this before I answer your
8 question.

9 Does anyone have a formal statement they want to
10 read into the record?

11 (Show of hands.)

12 MR. BLAIR: Okay. Julie Keil and Gary.

13 Anybody else?

14 (No response.)

15 MR. BLAIR: Two of us.

16 In other words, if you have a formal statement
17 you want on the record you can -- of course you can file
18 additional comments before August 22.

19 Okay. We've got -- We have plenty of time. We
20 can, with the -- the way I have the agenda structured this
21 morning is to have a Q and A in general about what -- about
22 the presentation we just made. But if you think it would
23 further the process of question and answer then we can
24 interject the formal comments now.

25 Does everyone want to hear the formal

1 presentation comments now? Who wants to hear that?

2 (No response.)

3 MR. BLAIR: Nobody. They want to go on with Q
4 and A, Gary. Okay.

5 (Laughter.)

6 MR. BLAIR: The agenda calls for formal
7 presentations after lunch. Given how we're proceeding so
8 far we're right on time. We might be able to forego lunch
9 and extend it and get all the comments in this morning and
10 then adjourn early. So let's play it by ear.

11 So let's continue on with the QA.

12 MR. JAYJACK: I just want to respond to the first
13 part of Gary's comment.

14 MR. BLAIR: Okay.

15 MR. JAYJACK: I do want to note that we're in a
16 very good position with this particular project in that the
17 settlement agreement has come prior to the draft NEPA
18 document. So I'd just like folks to keep in mind that this
19 is a draft document and this is our first try at
20 understanding what is in the settlement. And so there will
21 be a final. And we most definitely will be reviewing the
22 oral and the written comments that we receive.

23 So it's a very complex settlement. And I don't
24 claim, you know, that we've, you know -- that we're going to
25 get it right the first time. You know, with a 1004 page

1 settlement, I think is what I've seen in the letters lately
2 as to how big this settlement is, that there's -- you know,
3 it's very likely that we've misunderstood the intent and,
4 you know, even some of the science that's a part of that.

5 So anyway, there's a lot of room for dealing with
6 that.

7 MR. BLAIR: Let me, Gary, just to give you an
8 example, if you're familiar with the Augusta project in
9 Maine of some years ago, when we put out the Draft
10 Environmental Impact Statement we said that the dam would
11 stay intact.

12 I conducted the public meeting and there was this
13 emotional outpouring of the citizenry of Portland, Maine.
14 And it became evident that perhaps we had some voids in the
15 DEIS. And I simply told the public at the time, I said,
16 well, we can only make an evaluation on what we have before
17 us. If there's additional comments and additional
18 information that can support the position to take the dam
19 out, that's what we need, then.

20 Well, the upshot of it was that it came to be
21 very close as to whether the dam should stay in or the dam
22 should stay out. And we made the decision, a reversal, and
23 we know the rest of the story. The Edwards Dam is no longer
24 there.

25 So there can be changes, in this case dramatic

1 changes, in the results of the FEIS. But we need your
2 comments in specificity and not just, well, how could you
3 possibly do this to us. We need more specificity.

4 As Nick said, you've looked at this and been
5 working at the settlement for quite some time. Julia and
6 her staff and Nick and I and others just saw it a few months
7 ago and we had to give it out best shot.

8 Okay. I saw somebody else way in the back.

9 MR. ZONNER: Hi, I'm John Zonner.

10 And a lot of effort and time has been placed into
11 negotiations by all the parties. And the proposed articles
12 were determined to be necessary by all the parties involved.
13 They were developed to meet their interests, the individual
14 parties' interests as well as the public's interests. And a
15 prime example is funding for the Clackamas hatchery. That
16 was a very hard-negotiated item, which is -- definitely it
17 has a connection to the project itself and provides a very
18 vital and important recreational fishery not only to the
19 lower Clackamas River but also to the Portland metropolitan
20 area.

21 But my question is: It appears that FERC is
22 stepping away from the endorsement of settlement agreements;
23 through the DEIS it appears that that's the case. And my
24 question is: is that true?

25 MR. BLAIR: I guess the short answer is no.

1 MR. JAYJACK: The Commission has never said that
2 it does not endorse settlement agreements. You know, I read
3 the Gaston case and what it said -- I think the Commission
4 does speak to settlements in there. But what the Commission
5 has said is that sometimes there are measures in the
6 settlement agreements that, you know, that the Commission is
7 not able to adopt because of public interest issues or
8 because they don't have the authority to require some of
9 these measures.

10 And we've never come out and said we don't
11 endorse settlements. In fact, it's easier for us in most
12 instances with settlement agreements to make the public
13 interest calls because we know what people want.

14 But there are instances where, you know, we get
15 measures -- like, you know, I had read to you in paragraph
16 11 of this Gaston Order where the Commission has said it has
17 difficulties with, it has -- you know, we still have a
18 responsibility to make a public interest call. And the
19 courts have held that that is our responsibility. And, you
20 know, we have to make that judgment. Somebody has to, and
21 the courts said that's our responsibility and, you know, we
22 defer in most instances to the Commission making that call.

23 So that's where we're coming from that, you know,
24 we recognize the hard work that goes into these settlements.
25 And we really try to do our best to adopt as many measures

1 as we can, but within the, you know, within the framework
2 outlined in this paragraph 11 that I had read to you.

3 MS. SOMERS: Jocelyn Somers with Office of
4 General Counsel for the Forest Service.

5 What's really difficult for me is you use this
6 term 'public interest' constantly. And yet I have no idea
7 what your underlying criteria are with regard to making an
8 assessment of what is or is not in the public interest.
9 Unfortunately, many of the measures that you've excluded for
10 either that reason or other reasons are conclusory.

11 You say, well they are or are not in the public
12 interest; they are or are not within the Commission's
13 authority. But you don't give any reasons. So it's
14 extremely difficult when you have 33 parties, you have a
15 licensee, you have every person or entity that represents
16 the public -- and I would submit that PGE is doing a fine
17 job representing rate-payers -- you have all of the public
18 who could possibly be interested in this project saying this
19 is in the public interest, the settlement agreement is in
20 the public interest, and yet you will sit there as FERC --
21 and I agree that it is your call.

22 But you will look at all this outpouring of
23 support for this agreement by all of the publics who could
24 possibly care and you will still say in a conclusory manner
25 it's not in the public interest to include 'x,' 'y' or 'z'

1 condition.

2 And I appreciate that it's your call. But I
3 would also like to know what the reasons are. And you don't
4 provide those reasons.

5 So I think it's great that you are representing
6 the public. But, guess what: So are we. We're not
7 connecting on that issue.

8 MR. BLAIR: Just to make a comment, in Chapter 5,
9 in all the items that we excluded we gave the reason why we
10 were not making -- we did not include the item. So rather
11 than get into a debate, because that's not the purpose of
12 this meeting is a debate -- it's to get comments and fact --

13 I would refer you back to our rationale in Chapter 5, which
14 is the meat or the bulk of the project to look over our
15 reasoning.

16 But we're not here to debate. We're here to --
17 We're not here to negotiate the language of the DEIS. We're
18 trying to find out how we can make our call in the FEIS
19 better. And if we made a mistake, as Nick said -- with 1000
20 pages in the settlement agreement it's not hard to do it --
21 then you need to point it out with specificity and not
22 emotion.

23 Gary.

24 MR. LARSEN: Gary Larsen, Forest Service.

25 I would offer, building on Jocelyn Somers' point,

1 that given the breadth of our respective agencies'
2 authorities -- and thinking of the federal, tribal, state,
3 and local level -- that we indeed collectively represented
4 and based our agreement on a very broad construction and
5 articulation of public interest. That was our intent.

6 And so I think as a fellow -- representatives of
7 a fellow-agency, you could look at and have a fair amount of
8 confidence in -- we may not have represented every last
9 piece of the public interest. But I tell you as one of the
10 negotiators, and knowing the other negotiators in the room,
11 we cared a great deal about the public interest and in fact
12 worked hard to do our best construction and articulation of
13 what that interest might be.

14 And I offer that in the spirit of as you think
15 about the things that we have articulated there is in every
16 case, in every article there is a strong basis for public
17 interest there.

18 MR. FONTECCHIO: Chris Fontecchio, NOAA General
19 Counsel again.

20 I wanted to ask a specific follow-up about the
21 C&D measures. And I'm going to start with a comment. And
22 that is just to emphasize again that this settlement
23 consists of trade-offs among ourselves, trading off some of
24 the certainty that we might get with other measures for
25 measures that are more acceptable to a broader audience. I

1 mean, you know, we have contemplated other measures that
2 might be very specific, but, you know, that the parties
3 couldn't settle on.

4 And so I just want to emphasize the importance of
5 trying to accept the measures we've come up with and the
6 delicate balance that it consists of. And specifically with
7 respect to the C and the D measures, I understand your
8 concern with a phrase that says 'and any other measure,' or
9 exactly what the words are. And I can venture a guess -- I
10 don't know if I speak for everybody here -- but putting that
11 in there did not come with an expectation that FERC could
12 actually analyze the open-ended possibilities there.

13 But couldn't you in the FEIS still analyze the
14 specific C and D measures that are there and say -- and
15 point out that they've left -- the parties have left
16 themselves an out for other measures and if it comes to that
17 then, you know, they're going to have to deal with that
18 another day? Couldn't you have drawn the line not cutting
19 off the C and D measures from the A and B but just cut off
20 that one phrase from all the measures that were identified
21 and still analyze it?

22 MR. JAYJACK: I'd have to think about it. But,
23 yes, if -- and I think we did do -- we did look at the C and
24 D measures in the environmental resource section, Section 4
25 of the Draft EIS and analyzed the benefits of those. I

1 think you're talking about the comp development or Section
2 5.

3 MR. FONTECCHIO: Right.

4 MR. JAYJACK: We could -- and we could still do
5 that if that's, you know -- if that's an alternative you
6 would like us to look at that is something we can consider.
7 In other words, removing that phrase and just having us look
8 at the A and B and C and D measures, yes.

9 MR. FONTECCHIO: We'll have to discuss it among
10 the parties a little bit more and follow up in our written
11 comments later on.

12 MR. JAYJACK: Okay.

13 MR. BLAIR: I thought it was time for you to be
14 on stage, Gary, there for a second. I thought we were
15 having questions.

16 Yes.

17 MS. GRAY: Ann Gray, U.S. Fish and Wildlife
18 Service.

19 And I guess my questions concern elimination of
20 the C&D measures as well and the exclusion of process for
21 the agreed-upon future lamprey standards and agreed-upon
22 studies should technology become available. These three
23 issues are modeled exactly after the Willamette Falls
24 settlements.

25 And in the tier decision-making for Willamette

1 Falls there is specifically language that says 'or other
2 measures identified.' So I'm not sure why the red flag went
3 up on this particular settlement and not Willamette Falls.

4 And the same issues with the lamprey standards
5 and lamprey studies. These were exactly pulled from
6 Willamette Falls. They don't mirror the language exactly
7 but they are the same in concept. And I'm not sure why you
8 guys decided to eliminate them.

9 So I guess my question is basically what's with
10 the inconsistency between the two settlements.

11 MR. BLAIR: Well, I think you already answered
12 your question in your statement in that you said the
13 language is not exact but it's similar. I'd have to -- it's
14 been two years since we did the Willamette Falls order, so I
15 can't recall what the wording is. I'd have to go back and
16 look at what the wording was in Willamette versus what the
17 wording is in this settlement to be able to respond.

18 Your statement was, well, it's similar; then
19 what's the problem. But it's similar and it's exact is two
20 different things. So we just have to look at that.

21 MR. JAYJACK: I'd like to add one quick thing.

22 I don't remember exactly the specific language
23 there. What I suspect was that the provisions relating to
24 that in the settlement came as Section 18 terms and
25 conditions. And what we would have done -- and what I

1 remember us doing is we required those measures as Section
2 18 terms and conditions.

3 We also recognized -- again I'm going from
4 memory. I believe we also recognized there are some of the
5 'or other measures' provisions in there or, you know, some
6 of the kind of a place-holder for any future standards that
7 might come down the pike to us. And what we did there is in
8 Article 401, Part C or D, we put in language in there
9 something to the effect that the provisions -- I'm sorry,
10 the Section 18 terms and conditions, some parts of that --
11 likely one of those being the future measures -- contemplate
12 long-term changes to project operations and facilities. And
13 what we said is that if that's the case then before those
14 measures can be implemented the licensee would have to come
15 to us with an application to amend the license.

16 So that's how we addressed that.

17 So we're not -- I don't think we're inconsistent
18 in that case. And I would imagine if we had a Section 18
19 term and condition come for this project that had a
20 provision for an unspecified future measures we would likely
21 recommend something very similar to that, that, you know,
22 that's a measure that we can't today assess the benefits and
23 costs of, but we can if an amendment application comes to
24 us. So we would likely recommend, you know, some very
25 similar language to deal with that.

1 So although the substance of the two provisions
2 of the settlement are different, you know, we're not at the
3 point of a license order at this point, nor final Section
4 18s, as I recall. So that's the difference, I guess.

5 Does that make sense?

6 MS. GRAY: Somewhat.

7 I guess, in response to John's saying that it's
8 not the same language, I would say the language in
9 Willamette Falls is actually broader than the language in
10 the Clackamas settlement.

11 MR. BLAIR: We will have to take a look at it
12 because it's been a while since we've dealt with it.

13 Jim Hastreider, do you have anything you want to
14 add?

15 MR. HASTREIDER: No, I think you've probably
16 addressed it pretty well, that essentially it would function
17 the same way, that ultimately the Commission would
18 anticipate the amendment to come back with an uncertain
19 future measure.

20 MR. BLAIR: Other comments?

21 Is this C and D or is this A, B and E?

22 Okay. Go ahead.

23 MR. FONTECCHIO: Again, Chris Fontecchio, NOAA
24 General Counsel.

25 And I apologize, I do have a number of questions

1 and I recognize that you want to give everybody a fair shot.
2 So I understand if you need to go around the room before you
3 get back to me again.

4 I wanted to ask -- a handful of our Section 18
5 fishway prescriptions appear on the list of 10J measures.
6 And I'd like to ask why that is.

7 MR. JAYJACK: I don't know. I don't recall that.
8 I'll have to go back and look.

9 In your written comments if you could point out
10 the specifics we could re-look at that and see where we
11 might have been in error.

12 MR. FONTECCHIO: Okay. Thanks.

13 Obviously this is something we feel extremely
14 strongly about. If there is just some confusion about what
15 authority we're exercising we'll be happy to make that
16 clear.

17 MR. JAYJACK: Please do.

18 MR. FONTECCHIO: I guess if the Commission has a
19 new idea that we should know about, okay.

20 Along similar lines, we had a number of measures
21 that were submitted as 10Js that are reclassified as 10As.
22 And so again, is there a specific reason for that?

23 MR. JAYJACK: I believe you're referring to
24 measures that were submitted as Section 10Js that we found
25 to not be within the scope of Section 10J. And we instead

1 looked at them as Section 10A, is that correct?

2 MR. FONTECCHIO: I think that's right. I think
3 that's how they were handled.

4 MS. JURROTT: Can I expand further on some of
5 this?

6 MR. JAYJACK: Sure.

7 MR. BLAIR: Name, please.

8 MS. JURROTT: My name is Melissa Jurrott with
9 National Marine Fisheries Service.

10 And I guess it's just -- we're struggling right
11 now to sort of follow your logic train in terms of how you
12 took our preliminaries and indicated whether they were, you
13 know, 18 mandatory kinds of conditions -- which I'm not sure
14 that you did -- and then modified those and put them in the
15 10J recommendations. And then further took some of those
16 early 18s and put them into 10As.

17 So in some instances they were 10As or 18s to
18 10As and 18s to 10Js and 10Js to 10As.

19 MS. TIMS: Section 5.2.2 of the DEIS explains the
20 rationale for the recommendations for accepting the 10Js or
21 reclassifying the 10Js as 10As. And so I'd like to just
22 refer you to the rationale presented in that section.

23 And again if you have specific comments about
24 specific measures being reclassified then please present
25 those in your comments so we can address them accordingly.

1 MS. DAY: Michelle Day, National Marine Fisheries
2 Service.

3 So when you're referring to that section you're
4 actually referring to the table and a column. That's where
5 we get your rationale?

6 MS. TIMS: No. There's text.

7 Yes, page 5-57 of the DEIS.

8 MR. FONTECCHIO: So then I guess your specific
9 reason -- I mean I understand that and I had previously seen
10 the sort of categorization of different reasons. But that
11 we should then cross back through the table and that's where
12 you get into a specific reason that we should interpret as
13 being the basis for not only not accepting it but for
14 kicking it out of 10J into 10A, for example?

15 MS. TIMS: Yes.

16 MR. FONTECCHIO: Obviously we'll be submitted
17 comments and trying to address that.

18 MS. TIMS: Excellent. Thank you.

19 MR. BLAIR: In the back.

20 MR. KOHANNON: Craig Kohannon with the Oregon
21 Water Resources Department.

22 One of the lines that Nick quoted from the
23 Roanoke Gaston Project, paragraph 11, was the vicinity of
24 the project was less than practicable. I noted in the DEIS
25 that FERC had stated as it pertains to wetland mitigation

1 that there wasn't much opportunity for wetland mitigation
2 within that basin.

3 Both the words "vicinity" and "impracticable" are
4 by their very nature unless we define them, undefined terms
5 and rather general.

6 In this case we have identified wetlands
7 mitigation in an area that was adjacent, directly to the
8 north, and also that was in the same geophysiographic area
9 with the same types of species.

10 Given that there isn't much opportunity within
11 the basin as pointed out by FERC, how might we have
12 addressed this?

13 MR. JAYJACK: I'm not quite sure how to answer
14 that. I don't know what an alternative might be in that
15 case.

16 If you look at past Commission orders, past staff
17 EAs, we've done our best to stick within the river basin
18 that the project is located. It has to do with, you know,
19 the geographic extent that the project has effects. And it
20 also, you know -- we've also stuck with the river basin
21 because that's basically what the FPA says: that it's a
22 license best adapted to a comprehensive plan for the river,
23 for the river basin. I can't remember the exact language.

24 But we've pretty much limited where mitigation
25 can occur to the river basin in which the project is

1 located. I'm not sure how else, you know, to address that.

2 But, you know, in this case I think the
3 mitigation measure you're referring to would take place in
4 the Sandy River basin. And where we were coming from was
5 the project is located in the Clackamas River basin. And we
6 didn't see a connection between project effects on the
7 Clackamas River and how the project affects resources in the
8 Sandy River basin I guess is where we're coming from. We
9 just -- We didn't the information to make that leap.

10 MR. KOHANNON: If I may follow up, and that is
11 that I appreciate that you would like to do them on the same
12 river basin, as would we. But as we have identified, that
13 was not practicable.

14 Also that what we were trying to mitigate for is
15 ongoing, obviously; but also the effect of the inundation of
16 Timothy Meadows, which is like 242 acres or something like
17 that, for the building of Timothy Lake.

18 I think the thrust, though, is that we're trying
19 to do something for species. And one of them in particular
20 I think was the red legged frog or something like that,
21 which I believe is a TES species. And I read both the FEIS
22 for the bullrun marmot, and that is also a species that is
23 identified.

24 It would seem in fact that -- I couldn't find an
25 example where they didn't have those same types of species

1 that they hadn't been classified in the same type of area as
2 far as mountainous or Cascade something or another and the
3 other one was lowland valley. It would seem that if the
4 option doesn't exist directly on the project then we have
5 little option other than to identify something and to do the
6 best that we can. And I think that's what has occurred
7 here. And I would just ask that you reconsider.

8 MR. BLAIR: Others?

9 MR. FONTECCHIO: Chris Fontecchio, NOAA General
10 Counsel.

11 I wanted to explore the mitigation fund a little
12 bit more. I understand from previous orders that the
13 Commission has expressed its concern over time with funds.
14 I would like to just maybe ask for a little bit more
15 guidance about what sort of a fund is acceptable.

16 To the extent we have identified in advance --
17 first of all, let me back up a second and say I think been
18 characterizing it as a slush fund is very unfair. You know,
19 this obviously is for a very serious purpose, and that is to
20 identify real mitigation measures for, you know, in many
21 cases listed fish species and other species that can benefit
22 from the kinds of projects that we have in mind.

23 That said, obviously, you know, we're hearing
24 about the level of specificity you'd appreciate in order to
25 actually analyze something.

1 What can the Commission do to recognize a fund?
2 You know, can the Commission recognize a fund that has a
3 list of potential topics and an approval loop that would
4 then require the submission of the specific topics at that
5 time? Is there something that can be done like that?

6 MR. JAYJACK: I don't know. I'd have to look at
7 it. I'd have to think about that one.

8 Let me tell you a little bit about what a so-
9 called good fund would be. Let me first say what was good
10 about this fund.

11 It was very clear to us generally what measures
12 were being contemplated. That's good because then we can
13 assess what potential benefits of those measures would be.
14 At least we're on the right path there. We know what the
15 costs would be.

16 What we weren't understanding is what needs are
17 being addressed by that fund. You know, I think back to the
18 Pelton fund, the Pelton Roundview case. There we understood
19 that there were some problems in the upper basin. And it
20 was pretty well established that there was a need for
21 habitat enhancement there. And it made sense to us that,
22 you know, we're putting fishways at the dam there on the
23 Pelton project. You know, we don't want to send those fish
24 into a not so good environment because it kind of -- it
25 lessens the benefits that we get from putting in the

1 fishways.

2 So there we were able to make the connection, the
3 habitat fund to that particular project. That was working
4 hand-in-hand with measures going on at the project.

5 In this case we weren't quite able to see that
6 connection. What we don't know is, well, what are the
7 projects in the Clackamas basin; you know, what habitats are
8 in need of enhancement.

9 It's sort of along those lines of why we were
10 able to make a public interest call because we simply -- you
11 know, we found ourselves asking the question, well, what
12 benefit is this going to give us. Yet enhancements in
13 general inherently are good. But they're only good if there
14 is a need that needs to be addressed. And we weren't quite
15 sure what the individual needs were.

16 MR. FONTECCHIO: I'd like to just submit that the
17 fund is one of many moving parts, like the A and B and C and
18 D measures as well, and that, you know, the use of funds for
19 these kinds of projects may get us to the standard we're
20 trying to meet. They're intended to not only -- they're
21 intended to try and get us to the standards that we've set
22 for fish survival on this project, just as much as the other
23 measures are.

24 So couldn't the Commission kind of see them as
25 one of the many moving parts that, through adaptive

1 management, will get us toward this goal?

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1 MR. JAYJACK: I don't know. But I keep going
2 back to that paragraph 11 from Gaston that the Commission,
3 it said its preference, its very strong preference, I think
4 were the words it used, were measures -- in other words, it
5 wants to know, they want to know what those measures are,
6 what needs are being addressed by those measures and they
7 prefer that to a fund. And so we have that in the
8 background -- that in the forefront of our minds when we're
9 looking at these and evaluating the projects today.

10 And again we feel more confident in the case when
11 we're given a fund to look at and analyze if we not only
12 know what those measures are but what benefits, you know,
13 what problems or what enhancements or what the need is for
14 those measures. I guess that's really all I can say to that
15 subject at this point.

16 MR. FONTECCHIO: Okay. I would just submit, and
17 maybe Julie can verify this, but the investment that PGE is
18 making is, you know, heavily in terms of measures versus the
19 fund. And the fund is sort of a spoke in the wheel, if you
20 would. That said it's part of the adaptiveness of this
21 project and the flexibility to try and get us to where we
22 need to be more efficiently than simply having a bunch of
23 measures that we can identify now -- I'm sure you're well
24 aware of the uncertainty in trying to meet fish survival
25 standards.

1 Thank you.

2 MR. BLAIR: Melissa, you've had the right hand
3 up, the left hand up.

4 MS. JUNT: I guess I'd like to just expand a
5 little bit on this before we leave it. In terms of where I
6 feel like the Commission is pushing to more specificity and
7 the Staff alternative is really making us wonder what the
8 intent was in terms of how do we adapt and make -- how do we
9 meet with everyone sort in a way that makes sense in terms
10 of the project. And I feel the Commission -- or these
11 messages we're getting from you try to push us in the other
12 direction in terms of a survival standard and whether or not
13 there's uncertainty in the early years. There absolutely
14 is.

15 But in our world, when we analyze the effects of
16 these kinds of things we were thinking well something like
17 the fund would be highly beneficial in terms of affecting
18 other portions of the life stage or positively affecting the
19 species in that sort of short-term and even, you know, who
20 knows how long it's going to take to be quite honest, how
21 long we're going to be in this adaptive management approach.

22

23 So I think that's solidly -- and if one were to
24 step back and think of it that way, that absolutely is a
25 reason to have a fund in terms of positively affecting a

1 species in a period of time when we're trying to meet an
2 adaptive management approach and a survival standard but we
3 haven't quite got there.

4 We've been working very hard about the rationale
5 on this because we really want to put pen to paper and give
6 plans a rationale to help you understand our rationale for
7 wanting to have this fund and these kinds of measures for
8 fish species. And we'll be doing that in our comments and
9 also in the biologic opinion when we have a fully-formed
10 proposed action.

11 MR. JAYJACK: Let me add one more thing. Here's
12 one thing that would be a big help to us. You've listed
13 around eight or 10 types of measures and I don't remember
14 any one specific one at this point but let me just throw an
15 example out there.

16 Let's say the fund might be used to fix an
17 erosion problem on a tributary in the Clackamas River Basin.
18 And the message I'm getting there is that somewhere in the
19 basin there's a specific erosion problem that folks have in
20 mind. And I ask myself where is it and what is the problem.
21 So if you can come back and give us examples of where there
22 are problems and where there is a need, it's going to be a
23 lot easier for us to make that connection to the project and
24 make that public interest call. Which is what the
25 Commission is telling us in that paragraph 11, it's a lot

1 easier for them to make that. So that's the type of
2 information that we're looking for.

3 You know, you've come up with 10 or 11 types of
4 measures; there's a reason why you did that. And I may be
5 envisioning what you have in mind where there could
6 potentially be some problems that need to be addressed. If
7 you could put pen to paper and tell us what those are, it
8 would help us in our environmental analysis.

9 MR. FONTECCHIO: We will definitely be doing
10 that. Whether it's in a specific place or if it's more of a
11 general problem in the basin, we'll try and describe that as
12 much as we can.

13 MR. BLAIR: The gentleman way, way in the back of
14 the room.

15 MR. DREVO: My name is Sam Drevo. I'm with
16 Northwestern Guides.

17 I'm sort of coming from the recreational paddling
18 concern. The license is sort of an established license in
19 the public interest and, you know, building a comprehensive
20 plan for the river basin. And indeed, Clackamas County has
21 implemented a huge initiative to boost tourism and
22 recreation in the area.

23 Basically a recreational play park is needed for
24 three reasons: instruction, slalom -- which is an Olympic
25 sport -- and play boating. So we've asked for increased

1 flows in Faraday. And the Lower Columbia Canoe Club, the
2 Oregon County Canoe Club, and Willamette Canoe Club have
3 concerns. PG&E has listened, but there have been no
4 increased flows that have been provided. So I was kind of
5 wondering about that.

6 MR. BLAIR: I have to defer to Portland General
7 Electric to answer that one. Were you a part of the process
8 in terms of the settlement agreement?

9 MR. DREVO: Yes.

10 MR. BLAIR: I can't address why the group did not
11 respond to your concerns. I'd have to defer to Julie Keil
12 of Portland General Electric.

13 MS. KEIL: The situation that I think most people
14 took into account for the Faraday diversion reach was there
15 are increased flows in that region in the settlement
16 agreement, but they're based on fishery needs, which was the
17 predominant thing we were trying to address in that reach
18 and then sort of the whitewater measures come back in on top
19 of that as other things that are included in the settlement.
20 There are whitewater measures in the settlement. There is a
21 feasibility analysis for a play boating structure, but we
22 can't put play boating on top of endangered species without
23 making sure that our fishery and agencies believe that
24 that's a wise thing to do. So the settlement group in
25 general, including the whitewater interests, agreed to that

1 priority in passing and that's the way it's set up.

2 MR. BLAIR: Other questions in the back?

3 (No response.)

4 MR. BLAIR: Okay. No comments.

5 Michelle?

6 MS. DAY: Michelle Day, National Marine Fisheries
7 Service. I have a question for what something is. I'm
8 looking at the DEIS page 5-71. At the very bottom of that
9 page, in particular, it says -- it's talking about the
10 quality and long-term viability of wetland or riparian areas
11 and it says that these would be improved. And in specific
12 this is my question: as a result of the implementation of
13 the wetland and riparian habitat mitigation and enhancement
14 plan, which includes enhancement, acquisition or restoration
15 of wetland and/or riparian habitats, in particular, what
16 were you guys referring to when you said that? Was that the
17 fund?

18 MS. TIMS: The wetlands mitigation plan includes
19 wetland enhancements at Davis Ranch wetlands and Promontory
20 Park, and those were recommended by FERC Staff.

21 MS. DAY: What's the riparian part?

22 MS. TIMS: I'm not sure. I'm not sure of the
23 specifics right now. I'd have to revisit that. Because I'm
24 not familiar with these sites, I would need to look at the
25 proposal again before answering that specific question. But

1 as far as wetlands go, those sites addressed the wetland
2 issues.

3 MS. DAY: In my analysis the only thing I could
4 think of was the aquatics habitat fund, the aquatics
5 enhancement fund.

6 MR. JAYJACK: We'll take a look at it. Remember
7 it is a draft document.

8 MS. DAY: Right.

9 MR. BLAIR: It is now 11:00. Again, the formal
10 comment presentations that people have, if everyone is
11 through at least now with their initial comments or
12 questions --

13 MS. TIMS: Could we just take a 10 minute break?

14 MR. BLAIR: 11:00, back here at 11:15, then we'll
15 start in with the formal presentations.

16 (Recess.)

17 MR. BLAIR: Back on the record.

18 Julie?

19 (Slide.)

20 MS. KEIL: I appreciate the time of FERC Staff to
21 come out and listen to the parties' concerns about the draft
22 EIS, and I think the discussion this morning has pointed out
23 a number of particulars where people have issues. I guess
24 when I thought about this, I wanted to go back a little bit
25 and talk about why we do this and set the stage for PGE's

1 written comments.

2 I think it was interesting to hear Nick refer
3 back constantly to the Gaston order and Project 2009. When
4 we look at all of this, we try and take a more holistic view
5 I guess in our perspective of the breadth of FERC policy as
6 expressed in the orders.

7 We do do our best to listen from out here in the
8 West. It's a long way between here and D.C. but we do our
9 best, and the way we do that is by reading FERC orders and
10 looking at what comes out in them. So when we think about
11 why we settle, why parties spend all that time at the table,
12 first thing we do is look at the Commission policies
13 favoring settlements.

14 (Slide.)

15 All this language should look familiar to folks
16 who read FERC orders, a long history of the Commission
17 strongly favoring settlement efforts to avoid more lengthy
18 proceedings and to come up with agreement on issues that are
19 compatible with public interests and within the Commission's
20 authority to adopt.

21 (Slide.)

22 Again, the Commission strongly encourages
23 settlement agreements to resolve relicensing issues and
24 often, although not so much recently, commends the parties
25 for their efforts to take care of a broad range of issues in

1 the context of relicensing. Commission policy has long been
2 to promote voluntary settlements as a useful tool in the
3 administration of its responsibilities.

4 (Slide.)

5 Finally, it's long been recognized that it's
6 within the Commission's authority to adopt settlements,
7 again, favoring the settlement of complex issues of which
8 one would have to admit the Clackamas River project presents
9 a number of complex matters.

10 (Slide.)

11 It's our belief and I think the belief of the
12 settlement parties that that settlement we reached -- all
13 1004 pages of it -- applies these longstanding policies and
14 applies it with some vigor. It eliminates the need for
15 lengthy proceedings. We've been working a long time on
16 this, but absent settlement we'd be working on it a lot
17 longer. It resolves a set of very complex issues. As Julia
18 pointed out, we have four developments all in one project
19 here. Those developments affect a wide range of anadromous
20 and resident species, a wide range of terrestrial species
21 that are integral to the recreation efforts that are going
22 on.

23 As our friend in the back of the room pointed out
24 a while ago, Clackamas County is actively promoting growth
25 and recreation. It's compatible with the public interest.

1 As I felt obliged to stand up and say a little bit ago, we
2 believe it protects the interests of PGE's customers in a
3 way that also represents good natural resource balance. We
4 also don't believe that there's anything within the
5 settlement that's not within the Commission's authority to
6 adopt.

7 (Slide.)

8 The settlement is comprehensive, it's very
9 interconnected, and we would urge the Commission to take the
10 time to truly analyze the settlement to make sure that it's
11 accurately reflected in the FEIS and, to the extent there
12 are continuing issues or concerns about the parties' intent,
13 to try and find some mechanism to engage the settlement
14 parties in a dialogue outside of a more heated public
15 hearing setting such as this to make sure that we are all on
16 the same page about what the parties' intent is and how it
17 can be best incorporated into a FERC license.

18 The one thing that you don't really see in the
19 settlement that's connected to this issue of complexity is
20 what was not agreed to, that is to say, what we left off the
21 table and what people compromised away. Those compromises
22 are key to the public interest here in our view and key to
23 the reason that the parties were able to support this
24 settlement.

25 (Slide.)

1 Another reason for reaching settlement: the
2 Commission's policy for preferring good neighborliness on
3 the part of its projects.

4 (Slide.)

5 This is a quote from a very recent order which
6 many people in this room probably remember. Unfortunately
7 it doesn't have anything to do with the settlement, it comes
8 out of the Condit order.

9 "The Commission strongly prefers its licensees to
10 be good citizens of the community in which they are
11 located."

12 A lot of the mechanisms and the agreements in the
13 settlement have to do with our desire to be good neighbors
14 and good citizens with regard to the impacts of the project
15 around the region. It recognizes the interconnectedness of
16 the project with its environment and with its communities
17 and draws some lines about shared responsibilities that are
18 important to the parties and important to the company.
19 Probably roads are the best example of that. The use of
20 mitigation funds is another example of that in terms of us
21 making ourselves available to work collaboratively with
22 parties in the future.

23 (Slide.)

24 We really believe that the settlement is the best
25 opportunity to address all aspects of the public interest.

1 It's the best option for PGE and its customers in the
2 production of electricity. This project has survived
3 relicensing largely intact in terms of its energy values and
4 certainly could have, under the mandatory conditioning
5 authorities we face, come out with a whole lot less
6 electricity production capability had we not reached
7 settlement.

8 It's consistent and respectful of the mandates of
9 the various resource agencies and their obligations, another
10 very important thing for the company and I would think for
11 the Commission as well. I believe it's also respectful of
12 the Commission's role in the future, its jurisdiction and
13 its enforcement role.

14 All of the decisionmaking structures that are
15 implied and included in the settlement include a loop for
16 Commission approval of those agreements in the future by the
17 parties. PGE is always cognizant of the fact that we are
18 ultimately regulated by the Federal Energy Regulatory
19 Commission and, to the extent folks have interpreted the
20 settlement as meaning something other than that, that is a
21 clear misinterpretation of the settlement.

22 Again, the settlement recognizes our integration
23 into the larger community. It's very hard to draw a bright
24 line around a project and say the project impacts go this
25 far and no further, so we recognize a certain amount of

1 shared responsibility.

2 I looked long and hard here for a picture of the
3 floating green at Lake Coeur d'Alene on the no-project-is-
4 an-island theory, but it turns out they really like that
5 thing and they don't want you to clip it off the website.
6 But it is nonetheless the point that we are not isolated
7 here and we are not easily segregated from the community in
8 which we operate.

9 (Slide.)

10 I wanted to emphasize a little bit the extent of
11 the settlement efforts that the parties have gone to, based
12 on our understanding of the breadth of Commission precedent
13 favoring settlements and looking at measures that have been
14 included as a result of previous settlements.

15 (Slide.)

16 During the ALP phase of this process, 255
17 meetings of parties in various subsets and microsubsets and
18 nanosubsets attempting to address difficult and weighty
19 issues of resource protection, tens of thousands of pages of
20 record developed, an awful lot of science and an awful lot
21 of collaborative thinking around defining the project
22 impacts and working on the best ways to find resolution to
23 that, as Nick mentioned earlier, 33 settlement parties
24 signing this agreement.

25 We believe we have represented the vast majority

1 of the parties who have any interest in the project and
2 their opinion about the public interest is strongly
3 expressed through the terms of the settlement.

4 We took great advantage of the availability of
5 non-decisional FERC Staff and we really do appreciate Jim's
6 advice and counsel and did our best to incorporate that into
7 the terms of the settlement.

8 After the settlement, the parties formed a
9 settlement group, 170 settlement meetings over the space of
10 two years, an awful lot of effort on the part of everyone
11 involved, and that doesn't include unofficial meetings,
12 phone calls, and it certainly doesn't include meetings
13 between agencies when the licensee was not in the room.

14 And as Nick pointed out, a 1004 page settlement
15 agreement, including completed implementation plans in many
16 key areas, and I think that's a really important factor. To
17 the extent the Commission feels there's an amount left open
18 here, there's also a tremendous amount closed and finished.

19

20 And I think the settlement parties deserve great
21 recognition for that. There are completed and agreed-upon
22 plans for most of the resource areas and it's a real shining
23 star for the parties who participated.

24 (Slide.)

25 PGE will be filing detailed comments. I did want

1 to emphasize a couple of points as I closed. The settlement
2 provisions are interconnected. That is to say, it's very
3 difficult for parties to concede removing some part of it
4 and not affecting the whole in terms of the compromises that
5 were made and the agreements that were reached in terms of
6 representing the public interest. And again, they reflect
7 not only what we agreed to do but also, by inference, what
8 we didn't agree to do. And those things that came off the
9 table in the spirit of compromise are very important as we
10 think about the balance that was struck in the public
11 interest.

12 We believe that the settlement terms are well
13 within the Commission's authority to adopt. There are
14 numerous examples around the region, none of these are sui
15 generis; we didn't really think of any of these things all
16 on our own.

17 Willamette Falls is very much in line with the
18 tiered decisionmaking that we see here. Out of basin
19 mitigation is a common tool that's adopted in FERC licenses.
20 Skagit is probably the biggest example of that.

21 Funds have been included in licenses for years
22 and years and years. Indeed, the Clark Fork license --
23 which is probably ancient history now these days. The Clark
24 Fork license that was issued to then-Washington Water Power
25 is almost entirely funds. So we struggled to see why this

1 is so out of line with FERC's authority.

2 We believe it provides a comprehensive and
3 thoughtfully developed package of measures and we've
4 struggled and I think come to a place where we have
5 addressed all project impacts. Julia Tims put up a list
6 earlier of the impacts that were considered in the DEIS.
7 And except for sedimentation and erosion, which I sort of
8 struggle with in the context of this settlement, I believe
9 we have successfully addressed all the other issues that
10 FERC Staff thought needed to be addressed.

11 Thank you.

12 MR. BLAIR: We have Gary Larsen from the Forest
13 Service who wants to make a comment. Gary, you want to go
14 next?

15 MR. LARSEN: It's a difficult position being
16 between people and lunch. I'll note it's almost 12:30. I
17 want to thank you all for the opportunity to provide oral
18 testimony in this draft EIS, and I have four brief points to
19 make before I begin my formal comments.

20 First, my comments, although strident, are made
21 with all due respect. Secondly, I will exclude some
22 historical information in my oral presentation. They're in
23 the written presentation, but you all know the things that
24 I'm going to say here but they would be appropriate for
25 public comment.

1 Third, by borrowing Julie's term no FERC project
2 is an island, FERC projects are in fact connected to the
3 world that surrounds them by a variety of different kinds of
4 ecosystem processes and also by the people that use the
5 project and their recreation is affected by the project
6 activities. Mt. Hood National Forest, we have 4.5 million
7 people that come a year; many of them come and enjoy the
8 recreation in and around this project area.

9 And then the last point is that I offer these
10 comments in the hopes that they will help you reach final
11 decision; they'll give you a bridge and some rationale that
12 embraces our settlement agreement in its entirety.

13 First, I feel compelled to acknowledge the
14 important role played by all the other federal, tribal,
15 state and local agencies and organizations representing
16 citizens' interests who were parties to the discussions. As
17 intervenors, we all work hard to find common interests and
18 carve out solutions that met the statutory, regulatory and
19 policy requirements of our respective agency missions and
20 our authorities, as well as meeting more broad-based public
21 interests.

22 I speak to you today, as will many of the other
23 intervenors in their written comments, not as disinterested
24 casual observers but as vitally-interested stakeholders, as
25 intervenors who are prepared to exercise their agencies'

1 authorities under the Federal Power Act and as someone whose
2 experts know a great deal about the project at hand, its
3 impacts, and how to best mitigate them, and I'd just point
4 to our Forest Service team. I have our deputy head of our
5 negotiation, our attorney -- thank you, Jocelyn -- who
6 you've already heard from, our lead fisheries biologist, Dan
7 Shively, and our hydrologist, Connie Athman. And everyone
8 sitting at the table has a similar staff of people behind
9 them that worked on this.

10 Our agreement indeed represents the culmination
11 of eight years of concentrated work on the parts of
12 literally hundreds of natural resource and energy
13 professionals. This settlement agreement is a remarkable
14 demonstration of the intersection of science, law,
15 regulation, policy and interests that can be forged through
16 goodwill, careful communication, hard work and perseverance
17 and it's the truth that none of us knew until the end if
18 agreement was even possible.

19 It should come as no surprise to you, therefore,
20 the dismay with which FERC Staff's dismissal of our hard-
21 fought agreement was met by the parties to the agreement,
22 including the proponent. We expect that your
23 recommendations will be reconsidered.

24 We see in your proposal no legitimate reason why
25 our settlement agreement should not be adopted in its

1 entirety. As intervenors, we're resolute that our interests
2 be met one way or the other. It's amazing to us that very
3 little analysis on the part of FERC Staff has so readily
4 displaced years' worth of analytical work conducted by the
5 parties to the agreement who have detailed local knowledge
6 of the project.

7 And I would say that we also support the project.
8 These aren't people who hate hydro power and are striving to
9 stop it, these are people who support the project and we
10 desire to mitigate the impacts caused by the project.

11 To give you a sense of the seriousness with which
12 we regard these negotiations for this project, I'll share
13 with you excerpts of comments I made at our signing ceremony
14 on March 2nd. First and most importantly, the hundreds of
15 people who've put many months and years of hard work into
16 the project deserve great recognition for their efforts
17 spent on behalf of their own agency and the broader public
18 interest. I believe that FERC Staff owes these people and
19 their agencies and organizations serious consideration in
20 each of the points in the settlement agreement that we
21 worked so hard to reach -- and then I list several of them
22 and I'll just go through that quickly.

23 Deborah Nudelman and all the folks at Resolve who
24 have worked so hard and long to help us be successful:
25 diligence, class, panache and an amazing ability to impose

1 order on an avalanche of documents, what they brought to the
2 table. It's astounding. I don't think anybody else could
3 have kept track of the number of documents that we
4 generated.

5 Julie Keil and her team, including all the
6 contractors, did an excellent and most articulate job of
7 representing the ratepayers' interests, the broader public
8 interests. They took great diligence in taking the high
9 road looking for common ground.

10 The tribes and their representatives spoke their
11 interests clearly. They made significant contributions and
12 key points to the negotiations. Long-term perspective and
13 balance among the many other things are what they brought to
14 the table.

15 The State of Oregon and all the agencies and
16 people who most ably redeemed their various state
17 responsibilities in our federated state and system of
18 governance, conducted themselves as colleagues, friends,
19 professionals and they were highly dedicated.

20 All of the non-governmental organizations and
21 individuals who so willingly rolled up their sleeves and
22 came and joined the agencies and PGE to help make this a
23 better project.

24 All of my colleagues in brother and sister
25 federal agencies all did a most able job of representing

1 their respective interests: dedication, hard work and
2 advocacy are what they brought to the table.

3 And then my personal and professional admiration
4 to the Forest Service team: steadfast, long-term
5 commitment, professionalism and dedication describe them.

6 The second set of comments that I made at our
7 signing ceremony was acknowledgment of the complexity and
8 comprehensive nature of the project and decisions we've all
9 undertaken and consummated. We have together made some big
10 decisions that will last for a long time.

11 In my perspective, FERC's dismissal with in our
12 judgment no adequate reason is not a responsible response to
13 the specific problems raised in each provision and the
14 interdisciplinary, intergovernmental solutions that we
15 crafted.

16 In my written comments, I articulate a summary of
17 what we did and I'll just briefly go through that. We made
18 provisions for a sustainable and principally run-of-the-
19 river hydroelectric facility that produces clean power at a
20 continued maximum of 173 megawatts. I think that's
21 important.

22 We've protected aquatics, fish passage, minimum
23 in-stream flows, habitat improvements. We made good and
24 appropriate provisions for the various critters and plants.
25 We made provisions for restoring and protecting wetlands as

1 mitigation. We protected important cultural and historic
2 resources. We developed a comprehensive recreation resource
3 management plan and made provision for maintenance of the
4 roads for all the people that come there and use the
5 facilities that are immediately pertinent to and affected by
6 the project.

7 And then the last point I made was that I place
8 what we've done in the context of our process, our American
9 process of understanding governance is still in its relative
10 infancy; we're only beginning our third century as a nation.
11 And I believe that you all share with each of us a
12 responsibility to maintain the integrity of due process
13 spelled out in both the Federal Power Act and the
14 Commission's policies, as well as in our whole notion of a
15 federated form of government where the federal governments
16 and agencies play a role, as well as state and local
17 interests.

18 I think all of you know history much better than
19 I do, but I'll hit about four points or three points that I
20 think are relevant. In our first century as a nation, first
21 half, we established the formal institutions of democratic
22 governance and set the stage for capitalism as we know it
23 today.

24 In our second century, we revved up the engines
25 of our economy, developed institutions of the federated form

1 of government and, in the third century, the challenges that
2 are before each of us right now are to breathe new life into
3 our democracy, learn to get along with each other better at
4 home and abroad, harness our economy to better meet human
5 needs, learn to better take care of the earth so it, in
6 turn, can continue to take care of us, work the kinks out of
7 a multi-layered, multi-faceted, sometimes conflicted
8 federated form of governance and learn better how to
9 collaborate and bring together private enterprise and public
10 purpose.

11 What we have done in our settlement agreement is
12 set a major milestone in improving governance and bringing
13 together people for public and private purpose. We've
14 worked together hard, all the agencies, and from my
15 perspective FERC has a responsibility to honor our agreement
16 and change it only when compelling evidence to the contrary
17 is provided.

18 Then more to the immediate point of this hearing,
19 I want to touch upon the following compelling substantive
20 points that support our and other parties' requests that the
21 Commission approve the settlement agreement in its license
22 and order and incorporate without material modifications all
23 of PGE's obligations under the settlement agreement.

24 First, the parties represent virtually all of the
25 intervenors of the Clackamas River Hydroelectric Project

1 that's proceeding before the Commission. Secondly, the
2 provisions of the project contain protection, mitigation and
3 enhancement measures that are necessary to provide for the
4 adequate protection and utilization of the federal
5 reservation of the Mt. Hood National Forest, managed by the
6 Forest Service, to ensure consistency with all of the
7 federal statutes, policies and, most particularly, our Mt.
8 Hood National Forest land and resource management plan as
9 amended.

10 I'll point out, as Julie did, that the Commission
11 stated repeatedly that it supports settlement agreements.
12 In our judgment, after having taken a very close look at it,
13 the settlement agreement we propose, in our judgment,
14 achieves an appropriate balance between power and non-power
15 resources such that the Commission should adopt it without
16 material modification.

17 I'll note that no objections to the settlement
18 agreement have been filed with the Commission. The DEIS
19 contains -- although expressed preferences, it contains no
20 legal or policy impediment to incorporating the settlement
21 agreement in its entirety into the new project license.

22 The parties to this agreement are resolute in
23 their desire that the settlement agreement be adopted in its
24 entirety. Speaking for the Forest Service, we're prepared
25 to file for rehearing the Commission licensing order to

1 redress rejected portions of the settlement in order to
2 preserve the original agreement intact and, if necessary,
3 carry it on to litigation.

4 Either the Commission's standards are being
5 violated by the current settlement agreement not being
6 adopted in its entirety or the Commission's making a change
7 in policy. If the former, the violation should be rectified
8 by adoption of the agreement in its entirety. If the
9 latter, the policy itself, to allow adoption of the
10 agreement in its entirety.

11 To honor the exemplary collaborative governance
12 between all levels of government -- and in my 30 years of
13 experience, I've never seen better -- I believe that you
14 have a serious responsibility to consider our settlement
15 agreement.

16 Interest-based negotiations -- and this was one
17 of the best examples I've been experienced in or seen -- as
18 a relicensing measure at the local level have been
19 remarkably successful in the Pacific Northwest and they
20 stand in stark contrast to the extended, protracted,
21 acrimonious litigation that often happens. In this case, as
22 with others, the Staff did not point to law, regulation or
23 policy that limits or prevents the Commission from ordering
24 implementation of the entire settlement agreement.

25 (Pause.)

1 I'm reading through material rather than speaking
2 it. I'll just pick up the high points.

3 Julie made the point, and I will reinforce it,
4 that collaboration engenders compromise and creative
5 resolution of interest-based issues and, as she points out,
6 what's been left on the table not agreed to is as important
7 as what's been agreed to and the two stand in careful
8 balance to each other for each party and in the end we each
9 made the calculus that the settlement agreement met our
10 interests and we felt that that balance was right for each
11 of us individually.

12 I would suggest that when Staff assumed the
13 settlement agreement could be broken out into its component
14 parts that what you've done there is you've affected the
15 careful balance achieved amongst the parties.

16 And a couple more points. Staff notes in the
17 draft that the FPA does not impose a no-net-loss requirement
18 or require full replacement for all the lost resources.
19 While the statement is obviously accurate, it is just as
20 certain that nothing in the FPA prevents the Commission from
21 adopting a settlement agreement that achieves such a goal,
22 and particularly in this case where there is no difference
23 in energy generation between the proposed action and the
24 Staff alternative.

25 In conclusion, we find it particularly concerning

1 that the Staff is willing to undo an agreement, given the
2 broad representation, varied interests and parties, it is
3 clearly in the public interest and within the Commission's
4 authority to endorse. We're not aware of any provision in
5 the FPA, Code of Federal Regulations, case law or
6 information in the record that compels taking such a
7 disruptive course in the DEIS.

8 There is no measure proposed in the Clackamas
9 River settlement agreement that's not been ordered in
10 similar fashion by the Commission in some other licensing
11 proceeding in the Pacific Northwest and we're unaware of any
12 written policy issued by the Commission that explains, let
13 alone directs such evaluation and change of the settlement
14 agreement that we proposed.

15 So it's unclear to us whose interest the Staff is
16 taking into consideration in making the recommendations. I
17 would remind you all that we equally, as you are -- although
18 you clearly have the authority in this case, in our
19 respective agencies we also have a duty to represent the
20 public interest and did so to the best of our ability. And
21 we urge you, the Commission, to take the action that clearly
22 represents the public interest by ordering adoption of the
23 settlement agreement as the preferred alternative.

24 Thank you for the opportunity.

25 MR. BLAIR: Thank you, Gary.

1 MS. GRAINEY: Good morning. My name is Mary
2 Grainey. I am the hydroelectric program coordinator for the
3 Oregon Water Resources Department, and today I'm speaking on
4 behalf of the State of Oregon's hydro application review
5 team which we call the HART.

6 HART consists of state agencies that are carrying
7 out their responsibilities under Oregon law. For PGE's
8 Clackamas project, the HART agencies include the Oregon
9 Department of Fish and Wildlife, Oregon Department of
10 Environmental Quality, Oregon Parks and Recreation
11 Department, Oregon State Marine Board and the Oregon Water
12 Resources Department.

13 I would like to thank FERC Staff for coming to
14 Portland and providing an opportunity for the public and all
15 the participants in the settlement agreement to present
16 comments on the draft environmental impact statement for
17 PGE's Clackamas project.

18 The State of Oregon notes that FERC has granted
19 an additional 15 days for written responses, and we
20 appreciate that. We believe that's a more appropriate
21 timeframe to allow for public input and response to the
22 changes that FERC has proposed to the project.

23 The draft EIS was based on a comprehensive
24 settlement agreement filed by PGE and 32 other parties on
25 March 29th of 2006. The parties included PGE, tribal

1 interests, federal, state and local agencies, water
2 providers, environmental groups and boating interests.

3 It is HART's recommendation that the settlement
4 agreement be adopted as a whole because it represents a
5 comprehensive negotiated package that balances the
6 multiparty interests and the public interests.

7 The DEIS recommends the Staff alternative which
8 departs significantly from the settlement agreement in a
9 number of areas. The Staff alternative does not provide the
10 resource protection that is required under State of Oregon
11 statutes and resource management plans. Adoption of the
12 Staff alternative would upset the balance of the interests
13 struck by the parties to the settlement agreement. It does
14 not provide an appropriate balance between the power and
15 non-power resources.

16 We believe that the departure from the settlement
17 agreement is inconsistent with the Commission policy
18 favoring settlements and we don't see a clear legal or
19 policy conflict to justify this departure.

20 The HART recommends the settlement agreement be
21 selected as the preferred alternative for the relicensing.
22 The public benefits of the settlement agreement exceed those
23 of the Staff alternative. The settlement provides the
24 measures necessary to protect and enhance fish and wildlife
25 and cultural resources and improve the recreational

1 opportunities of the project.

2 HART will provide written comments to show that
3 the new license should include measures that the DEIS
4 proposes to dismiss. The written comments will clarify the
5 nexus between the project impacts and the mitigation
6 measures that are not included in the Staff alternative.

7 HART will provide additional written comments on
8 the following issues:

9 Hatchery funding. The Clackamas fish hatchery
10 provides an essential harvest recreational fishery that
11 meets an important public need in the Clackamas, Willamette
12 and Columbia River Basins as well as ocean fisheries. ODFW
13 manages the hatchery to provide for a portion of the salmon
14 harvest lost when natural production was decreased due to
15 fish and habitat losses from construction and operation of
16 the project.

17 Project impacts to anadromous fish runs,
18 production and harvest continue into the new license.
19 Therefore, hatchery mitigation should be carried forward
20 from the existing license into the new license. All of the
21 hatchery fund components included in the settlement
22 agreement are considered necessary and essential.

23 Downstream fish passage. The DEIS departs from
24 the settlement agreement upon the decisionmaking structure
25 involved in the downstream fish passage standards. The

1 decisionmaking structure was developed in a manner that
2 satisfies all parties in the settlement and was a major
3 component of the settlement agreement itself. The measures
4 included within the decisionmaking structure are clearly
5 identified. The decisionmaking structure included in the
6 settlement agreement is identical to and modeled after the
7 PGE Willamette Falls project.

8 The departure from the agreed-upon settlement
9 results in inadequate downstream passage protection, it
10 places the settlement at risk and will create an obstacle to
11 future settlement projects. It seems to counter the
12 Commission policy of encouraging settlements.

13 Mitigation fund. An important component of the
14 settlement agreement is the mitigation fund. If this was
15 agreed to by all of the parties, the use of the fund and the
16 approval processes are well defined and they were
17 established in light of some very serious negotiations. It
18 is based on other impacts that cannot be fully mitigated
19 within the project.

20 The impacts to fish and habitat will continue
21 into the future despite the many improvements contained in
22 the settlement agreement. The mitigation fund is necessary
23 to benefit anadromous and non-anadromous fish populations in
24 the basin. It is similar to a mitigation fund recently
25 adopted as part of the license for PGE's Pelton Round Butte

1 project.

2 Cutthroat trout measures. The spawning
3 disruption program and the cutthroat trout connectivity
4 study are requirements of the fish passage waiver granted
5 for the project by the State of Oregon's Fish and Wildlife
6 Commission. They address impacts of the project on native
7 migratory cutthroat trout above and below both the Timothy
8 Lake dam and Harriett Lake dam.

9 FERC review and approval is included in the
10 proposed license articles to provide adequate review of the
11 costs and benefits of the measures. The approach is similar
12 to that adopted by FERC as part of the license for PGE's
13 Pelton Round Butte project. The measures are key components
14 of the settlement agreement.

15 Wetlands. Wetlands mitigation is necessary to
16 compensate for the inundation of Timothy Meadows by the
17 creation of Timothy Lake. However, few options exist within
18 the Clackamas River Basin for a significant wetlands
19 restoration project. Fortunately, the North Mountain parcel
20 is in close proximity to the project and is of similar
21 elevation and habitat type, thus providing for similar
22 species. The acquisition of this parcel is an important
23 element of the settlement agreement and should be adopted as
24 agreed upon by the parties.

25 Water quality certification. PGE's application

1 for water quality certification has been withdrawn and has
2 not yet been refiled. Several studies are being conducted
3 this summer that will contribute valuable information about
4 temperature regimes and options for managing temperature
5 effects in the lower river. Those studies are crucial to
6 ODEQ's process for determining if Oregon's temperature
7 criteria can be met for the Section 401 certification. The
8 studies will not be completed before September of this year.
9 PGE, ODEQ and the settlement parties are striving to resolve
10 the water quality issues in a timely manner for the
11 completion of the licensing process.

12 I'd like to just echo a little bit of what Gary
13 said about the no-net-loss standard and I think that, even
14 though it's not a requirement under the law that does not
15 prohibit us from striving to meet those kind of standards.

16 Law enforcement. Craig Kohanek will provide a
17 statement from the Oregon State Marine Board about the
18 marine board's commitment through the settlement agreement
19 to provide law enforcement, security and resource protection
20 on the project's reservoirs.

21 In conclusion, HART recommends that the preferred
22 alternative for the DEIS include the project's settlement
23 agreement as a whole package consistent with the
24 Commission's policy favoring settlements and to ensure that
25 resource protection is provided in full for the public

1 interest.

2 Thank you for this opportunity to comment.

3 MR. KOHANEK: My name is Craig Kohanek and I'm
4 with the Oregon Water Resources Department and today I'm
5 representing the marine board because their representative
6 was unable to be here. I also want to thank FERC for having
7 conducted this meeting and affording us this opportunity.
8 Hopefully it will be both compelling and also increasingly
9 informative.

10 I also would like to echo the sentiments that
11 both Julie, Mary and Gary have made about the level of
12 effort and commitment the parties made in order to arrive at
13 the settlement agreement. It was an incredible effort, well
14 orchestrated and well executed and should be adopted
15 unabridged.

16 The Oregon State Marine Board disagrees with the
17 Federal Energy Regulatory Commission Staff alternative as it
18 pertains to the support -- or lack of support -- of adoption
19 of funding for a Clackamas County marine deputy position,
20 also Portland General Electric's funding of a patrol boat
21 slip at the North Fork Reservoir.

22 The past two decades have seen significant growth
23 in recreational boating use at the Portland General Electric
24 hydroelectric project. Indeed, improvements proposed at
25 these reservoirs under the settlement agreement provide for

1 increased capacity and will likely result in even higher
2 use. Adequate law enforcement is crucial to maintaining the
3 quality of recreational opportunity, safety on the
4 reservoirs and rapid emergency response.

5 A consistent law enforcement presence serves as a
6 deterrent against vandalism, reckless operation, excessive
7 alcohol use and other activities posing risks both to
8 individuals and to the facilities. Moreover, this presence
9 supports homeland security issues and concerns. In addition
10 to serving these interests, marine law enforcement officers
11 are also trained to prevent the introduction of nuisance
12 aquatic species, routinely check for basic fishing
13 violations and conduct boat safety inspections.

14 These activities are vital to public use of the
15 Clackamas project. The need for such assistance and law
16 enforcement in large part would be a necessary except for
17 the project reservoirs. Therefore, funding assistance from
18 the licensee should be included in the FERC license articles
19 for the project.

20 The Clackamas River hydroelectric project is
21 unique in Oregon, as it provides a variety of recreational
22 opportunities to the state's most populous metropolitan area
23 due to its relative close proximity to that area.
24 Unfortunately, even though the project is comparatively
25 close to the state's major population center, marine

1 officers are currently stationed in Oregon City, Oregon,
2 more than 30 minutes from Riverville Dam and impoundment,
3 the closest project feature to Oregon City.

4 Meanwhile, Timothy Lake, the project's furthest-
5 most project feature from both the metropolitan area and
6 Oregon City, is some 80 miles from the marine officers'
7 station and requires nearly two hours of travel time, some
8 over rough gravel roads.

9 The heavily-used lower Willamette River forms the
10 northwest border of Clackamas County, requiring officers to
11 drive long distances between the two main use areas of the
12 county. This spatial separation results in long response
13 times in emergencies. If the officers must tow a boat,
14 response time is even greater.

15 The \$30,000 funding and provision for a boat slip
16 will help provide full-time seasonal enforcement on PGE's
17 reservoirs with quick access to watercraft.

18 As part of the negotiated settlement, the marine
19 board agreed and has already provided a grant of \$80,000 to
20 help build a boat access point at PGE's Estacada Lake
21 facility. The access point was needed because the historic
22 fully-functional boat ramp was closed by PGE in agreement
23 with the National Marine Fisheries Services due to its
24 interference with the required replacement of the historic
25 River Mill fish ladder.

1 The marine board negotiated with PGE in good
2 faith to help ensure recreational boat access to the
3 reservoir would remain. The agreement to help fund this
4 project was approved by the marine board in spirit and
5 cooperation which grew from PGE's willingness to support
6 expanded law enforcement at its facilities. Removal of the
7 law enforcement funding damages this spirit that was helped
8 -- forged in this agreement. Based on this and some other
9 issues and reasons, the marine board asks FERC to include
10 the law enforcement funding and boat mooraging agreements
11 put forth in the settlement agreement in its Staff
12 recommendation before the final environmental impact
13 statement and license.

14 Thank you.

15 MR. BLAIR: Anyone else have a statement they
16 would like to read or enter into the record?

17 (No response.)

18 MR. BLAIR: Last call.

19 (No response.)

20 MR. BLAIR: Where do we go next? After August
21 the 22nd, we will take a look at your comments and start to
22 formulate our FEIS. We anticipate that the FEIS will be
23 produced some time in the fall. The actual license order
24 will not come about until we have a water quality
25 certificate and completion of the ESA, Endangered Species

1 Act, process.

2 I have a question for the State of Oregon and
3 also for PGE. I heard a statement made that the studies for
4 mitigating the -- or possible mitigation for downstream
5 water temperature would not be complete until September.
6 What is your projected date for refiling your water quality
7 certificate?

8 John Esher?

9 MR. ESHER: Julie Keil?

10 MS. KEIL: Julie Keil, Portland General Electric.
11 At this point, we anticipate refiling by the end of the
12 year. That's a schedule we've been in discussion with DEQ
13 about. It's not finalized yet, but that's where we're
14 headed.

15 MR. BLAIR: Okay. In terms of DEQ, can anyone
16 respond whether it will take the full year to process?

17 For example, in the State of Idaho, they have a
18 public process -- I'm not familiar with the State of Oregon
19 -- in which they have to go out and hold public meetings, to
20 try to get a semblance of closure on the water quality
21 certificate.

22 MS. NEWELL: Avis Newell, Oregon DEQ.

23 At this time we will reserve our full-year time
24 in order to process the 401 application since this is a
25 certificate where it could be difficult for us to determine

1 if all of the water quality standards can be met. On the
2 other hand, we do have a lot of information about many of
3 the water quality parameters and we think that part of the
4 certification should go quickly. Within our 401 process, we
5 have a 60-day public comment period required, so that
6 effectively takes up four months of the one year time period
7 to conduct the 60-day comment period, give ourselves time to
8 reflect that. It may be shorter than a year, it may be
9 close to a year.

10 MR. BLAIR: Okay. Thank you.

11 A question for NMFS. We've got to resubmit or
12 receive the pages he indicated they would take no action on
13 ESA until the water quality certificate was completed. We
14 will be responding to that letter soon. We feel that the
15 action before you is not related to the water quality
16 certificate action. The action before you is the action we
17 have taken in our DEIS, but we will respond formally to
18 that.

19 Any other comments anybody wants to make?

20 (No response.)

21 MR. BLAIR: It's high noon. Thank you very much
22 for your cooperation. We look forward to your comments on
23 August 22. Thank you.

24 (Whereupon, at 12:00 noon, the conference was
25 adjourned.)