

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FEDERAL ENERGY REGULATORY COMMISSION  
AND  
THE STATE OF WASHINGTON  
BY AND THROUGH ITS DEPARTMENTS OF ECOLOGY, FISH & WILDLIFE,  
NATURAL RESOURCES, COMMUNITY TRADE AND ECONOMIC  
DEVELOPMENT, AND STATE PARKS AND RECREATION COMMISSION, AND  
THE GOVERNOR'S OFFICE OF REGULATORY ASSISTANCE

The State of Washington (Washington) by and through its Departments of Ecology, Fish and Wildlife, Natural Resources, Community Trade and Economic Development, the State Parks and Recreation Commission, the Governor's Office of Regulatory Assistance, and the Federal Energy Regulatory Commission (Commission), as Parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

A. The Commission issues licenses under Part I of the Federal Power Act, 16 U.S.C. §§ 791a *et seq.* (FPA) for non-federal wave, tidal, and in-stream energy projects also referred to as hydrokinetic technologies. This includes, but is not limited to, wave, tidal, and in-stream energy projects that are proposed to be located in Washington State waters. The Commission's staff has established several possible means of authorizing hydrokinetic energy projects, including procedures to allow shorter-term, experimental projects with environmental safeguards.

B. Washington has authorities with respect to hydrokinetic energy projects that are proposed to be located in its state waters, including authorities under the following federal laws: the Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.* (CZMA); the Clean Water Act, 33 U.S.C. §§ 1251-1387 (CWA); the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.* (NHPA); as well as the FPA. Washington State law also includes provisions applicable to hydrokinetic energy projects that are proposed to be located in its state waters, affecting state waters, and upon state-owned aquatic lands, including proprietary authorization, regulatory authorization to use waters of the State, and regulatory authorization to use the State's shorelines.

C. The Parties have a mutual interest in the timely processing of applications for regulatory and other approvals required for hydrokinetic energy projects in Washington State waters to promote clean, renewable sources of energy.

D. The Parties also desire to create a process to make it possible for developers of all hydrokinetic energy projects to establish short-term or experimental projects within Washington State waters in order to study, monitor, and evaluate the environmental, economic, and cultural effects of hydrokinetic energy. In particular, Washington State is concerned with the potential impact of hydrokinetic power generation on estuarine circulation, water quality, and key resources in the Puget Sound and other estuaries. The Parties intend that information developed during the pilot

project licensing process will assist in the decision-making if requests for any longer-term authorizations for hydrokinetic energy projects in Washington waters are made.

E. The purpose of this MOU is to coordinate the procedures and schedules for review of hydrokinetic energy projects in Washington State waters and to ensure that there is a coordinated review of proposed hydrokinetic energy projects that is responsive to environmental, economic, and cultural concerns while providing a timely, stable, and predictable means for developers of such projects to seek necessary approvals.

Now, therefore, the Commission and Washington agree that:

1. Washington supports the efforts by Commission staff to establish procedures to allow shorter-term, experimental hydrokinetic energy projects with environmental safeguards through the pilot project licensing process. These procedures may, in appropriate cases, allow the licensing of hydrokinetic energy projects by the Commission in a significantly shorter period than a full licensing process would require. The Parties agree that the pilot licensing process may be appropriate as a short-term means of allowing hydrokinetic energy projects to proceed on a pilot basis while additional environmental and other data concerning the effects of such projects are gathered. The Parties also agree that any shorter licensing approach established must incorporate appropriate safeguards, limitations, and monitoring to ensure that there are no significant adverse environmental, economic, or social effects.

2. When the Commission or Washington becomes aware of a prospective applicant seeking a preliminary permit, pilot project license, or other license from the Commission to study or develop a hydrokinetic energy project in Washington State waters, the party obtaining the information will promptly notify the other party to enable coordinated review of the project between the Commission and Washington State. In such cases, the Commission and Washington will work together to the maximum extent feasible, with the prospective applicant and other participants in the Commission's pre-filing process to identify potential issues, to determine what information is needed, and what studies must be conducted in order to meet the requirements set forth by state and federal laws. Coordination among the Commission, Washington, and the applicant will set expectations and assist with the information needs on a proposal and will greatly assist the review process.

3. Where a prospective applicant seeks to use the pilot project license process or any other licensing process for hydrokinetic energy projects to be located in Washington State waters and subject to the Commission's licensing jurisdiction, the Commission and Washington agree to confer, as early in the process as practical, in order to reach agreement on a schedule for processing the application as expeditiously as possible. Such a schedule, to be issued by the Commission, will include milestones for the Commission's review of the application and issuance of an environmental document, and the issuance by Washington of any certifications or concurrences that may be required from it under federal law. To the extent feasible, Washington will complete any actions required of it within timeframes established in the schedule. Notwithstanding,

Washington will complete such actions by deadlines established in law. The Parties further agree that they will use their best efforts to encourage other federal agencies and stakeholders that have an interest in a proposed hydrokinetic energy project in Washington State waters to help develop and comply with a coordinated schedule for the review of the project.

4. Washington, through the Governor's Office of Regulatory Assistance, has assisted current hydrokinetic project applicants and preliminary permit and license holders with regulatory and technical issues. Furthermore, Washington State may establish a workgroup to examine environmental and permitting issues for wave and tidal technology that may result in baseline information for monitoring plans in Washington. The criteria developed through these or other processes may apply to broad categories of technologies or be developed for specific sites. If standard criteria are developed by technology type, site-specific conditions may alter any of Washington's standard criteria. Washington will submit any such criteria developed as part of a comprehensive plan, settlement agreement, or other process to the Commission for consideration. The Commission will consider incorporating these requirements as permit or license conditions to the fullest extent feasible.

5. The Parties agree that they will work to coordinate their environmental reviews of any proposed hydrokinetic energy project in Washington State waters subject to the Commission's licensing jurisdiction so that documents prepared by the Commission for review under the National Environmental Policy Act, 42 U.S.C. §§ 4231 *et seq.* (NEPA), may be used by Washington agencies to satisfy the requirements of the Washington Ocean Resources Management Act, Shoreline Management Act, State Environmental Policy Act, and other similar requirements that are enforceable policies of Washington's approved Coastal Management Program under the CZMA, or any other required actions to be taken by Washington. The Parties also agree to consult with stakeholders, including the project developers, concerning the design of studies and environmental measures, including adaptive management measures, for hydrokinetic energy projects in Washington State waters.

6. The Parties acknowledge that Washington may opt to prepare a comprehensive plan specifically addressing the siting of hydrokinetic energy projects in sub-regions or all Washington State waters. If Washington develops and files with the Commission such a comprehensive plan ("Washington Plan") for the siting of hydrokinetic energy projects in Washington State waters under section 10(a)(2)(A)(ii) of the FPA and 18 C.F.R. § 2.19, the Commission will, in issuing any pilot project license or other license for a hydrokinetic energy project in Washington State waters, consider the extent to which the proposed project is consistent with the Washington Plan. In addition, the Commission will consider any terms and conditions that are recommended by Washington under section 10(a)(3) of the FPA to ensure consistency with the Washington Plan. The Washington Plan may be modified based upon new information collected by Washington, and/or with information collected from preliminary permits, pilot project licenses, or other licenses, and additional locations may be identified in subsequent phases of the comprehensive plan. Moreover, without limiting the foregoing, the

Commission will inform parties seeking a pilot project license or other authorization for a hydrokinetic energy project in Washington State waters of any other comprehensive plans outside of the Washington Plan developed and filed by Washington under section 10(a)(2)(A)(ii) of the FPA, and encourage the parties to reach agreement with Washington to the extent practicable. If any such comprehensive plans are subsequently refined or expanded, Washington agencies will submit these revised plans to the Commission. The Commission recognizes that Washington may also submit a comprehensive plan, such as the Washington Plan or any other appropriate plan, to the Office of Coastal Resource Management of the National Atmospheric and Oceanic Administration of the U.S. Department of Commerce for approval as an amendment to Washington's approved coastal management plan. Such a comprehensive plan may identify only a limited number of locations within Washington State waters where the State believes it is appropriate to locate hydrokinetic energy projects until further information concerning the effects of such projects is developed. The Commission also recognizes that when issuing pilot project licenses or other licenses, the Commission will consider the extent to which a proposed project is consistent with any of the completed regional or comprehensive plans described under this section.

7. For pilot project licenses in Washington, the Commission will consider establishing small footprints and/or limits on the number of devices that can be tested in order to minimize environmental risk. Washington will provide input on appropriate limits as needed.

8. Washington and the Commission recognize that any pilot project license or other license issued by the Commission for a hydrokinetic energy project in Washington State waters must give equal consideration to power and development purposes and the purposes of energy conservation, the adequate protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality for beneficial public purposes, including "irrigation, flood control, water supply, and....other purposes ..." [16 U.S.C. § 797(e); § 803(a)(1)(2000).]

9. Washington and the Commission will designate management contacts to work to resolve any procedural issues that may arise in the review of a specific proposed hydrokinetic energy project in Washington State waters. However, nothing in this MOU shall compromise or affect the rights of any party to seek relief through any available administrative or judicial process, including rights to intervene in, comment on, and appeal decisions by the Commission.

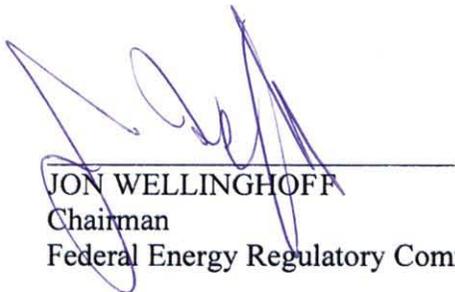
10. Nothing in the MOU requires any party to take any action that is contrary to applicable federal or state law or regulation.

11. This MOU is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws,

regulations, and procedures including those for Government procurement and printing. Any such endeavors will be outlined in separate documents that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. In addition, this MOU does not establish authority for non-competitive award to the cooperator of any contract or other agreement.

12. This MOU is not intended to be a binding contract enforceable in a court of law or in an administrative forum. It is intended only to lay out a process to further cooperation between the governmental entities signing this document.

13. This MOU will take effect when signed by all the parties hereto. This MOU may be modified at any time by the mutual written agreement of the Parties. The Commission or the State may terminate the MOU upon thirty (30) days written notice to the other. Any State agency may withdraw its involvement in this MOU upon thirty (30) days notice to the Commission and the Washington Governor's Office. During this period, the parties shall make good-faith efforts to resolve any disagreement. The length of this MOU shall be ten (10) years upon signing. The Parties may renew the MOU for another ten years if all Parties so agree.



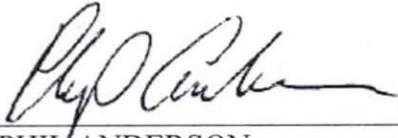
JON WELLINGHOFF  
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Federal Energy Regulatory Commission



CHRISTINE O. GREGOIRE  
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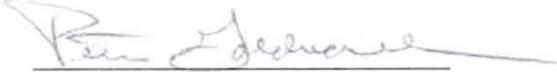


JAY MANNING  
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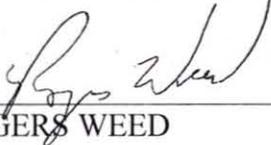
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PHIL ANDERSON  
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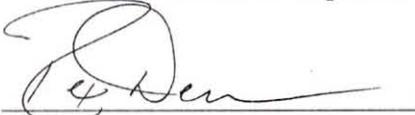
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PETER GOLDMARK  
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Washington Department of Natural Resources



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