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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AGATE PASSAGE TIDAL ENERGY
PROJECT

PROJECT NO. 12691-000

KITSAP COUNTY'S MOTION TO
INTERVENE

I. INTRODUCTION

Pursuant to Rules 210 and 214 of the Federal Energy Regulatory Commission ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.210 and .214, Kitsap County ("the County") hereby moves for late intervention in the above-captioned proceeding. The County is filing this motion for intervention in response to the July 3, 2006, Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests and Comments in FERC Project No. 12691-000. In support of the motion, the County respectfully states as follows:

II. COMMUNICATIONS

All correspondence, communications, pleadings and other documents related to this proceeding should be addressed to:

Shelley Kneip/Lisa Nickel
Kitsap County Prosecuting Attorney's Office
614 Division Street, MS 35A
Port Orchard, WA 98366
Telephone: (360) 337-4992
Facsimile: (360) 337-7083
E-mails: SKneip@co.kitsap.wa.us; Lnickel@co.kitsap.wa.us

KITSAP COUNTY'S MOTION TO INTERVENE - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 **With Copies to:**

2 P. Stephen DiJulio
3 Joseph A. Brogan
4 FOSTER PEPPER PLLC
5 1111 Third Avenue, Suite 3400
6 Seattle, Washington 98101
7 Telephone: (206) 447-4400
8 Facsimile: (206) 749-1935
9 E-mails: DIJUP@Foster.com; BROGJ@Foster.com

10 The County requests that each of the individuals identified above be placed on the
11 Commission's official service list in this proceeding and hereby consents to receiving such
12 service electronically.

13 **III. BACKGROUND OF THIS PROCEEDING**

14 Public Utility District No. 1 of Snohomish County, Washington ("Snohomish PUD")
15 filed a notice of application pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a) -825(r), for
16 a project known as the Agate Passage Tidal Energy Project ("Project"). Snohomish PUD filed
17 an application for a preliminary permit for a proposed tidal energy project that would consist of:
18 (1) Tidal In Stream Energy Conversion (TISEC) devices consisting of rotating propeller blades
19 three meters in diameter; (2) integrated generators with a capacity of 50 kW; (3) anchoring
20 systems; (4) mooring lines; and (5) interconnection transmission lines. The proposed project is
21 estimated to have an annual generation of 146.2 gigawatt-hours per year. The project is
22 proposed to be located in Agate Passage in Puget Sound, within Kitsap County, Washington.

23 **IV. INTERESTS OF THE INTERVENOR JUSTIFYING INTERVENTION**

24 The County is a Washington municipal corporation formed under the laws of the State
25 of Washington. The County's jurisdiction extends over the waters of Agate Passage. RCW
26 36.04.180.

The County has significant public and regulatory interests in the issues before the
Commission. The interest of the County as the public agency with delegated authority to

1 implement the State Shoreline Management Act of 1971 along the shorelines of Puget Sound, to
2 implement and enforce local water quality, water resources, critical areas and fish and wildlife
3 resources regulations and related policies along the shorelines of Puget Sound, and to provide
4 for the safety, health and welfare of its citizens is not adequately represented by any other party
5 in this proceeding. It is in the public interest that the local government charged with compliance
6 with these various laws, regulations and policies be heard before the Commission on matters
7 that affect those interests.

8 The County has the authority to grant franchisees the right, privilege and authority to set,
9 erect, construct, support, attach, connect, and locate utilities facilities, including Project
10 facilities in, upon, over, under, along, across and through the County for the purpose of
11 transmission, distribution and sale of energy. To that extent, the County has a vested interest in
12 ensuring compliance with all local laws related to the development, construction, and operation
13 of energy facilities or franchises within the County.

14 In light of the County's jurisdiction over Project areas depicted in the Application and its
15 regulatory obligations, the County desires to monitor and stay informed about the nature of the
16 Project and to participate herein to the full extent authorized under the Commission rules.

17 **V. MOTION TO INTERVENE**

18 Kitsap County requests leave to intervene out-of-time in this proceeding. Pursuant to
19 Commission Rules, a party is permitted to intervene in a proceeding if it is able to demonstrate
20 that it may be affected by the outcome of the proceeding, or if it can otherwise demonstrate that
21 participation is in the public interest. 18 CFR § 385.214. The movant must also show that the
22 proceeding will not be disrupted by the granting of the intervention, that the movant's interests
23 cannot be adequately represented by other parties to the proceeding, and that existing parties
24 will not suffer prejudice or additional burdens by the granting of the intervention. 18 CFR §
25 385.214.
26

1 As a municipality, 16 U.S.C. § 825g permits the Commission to admit Kitsap County as
2 a party in this proceeding.

3 The County is directly affected by the outcome of this proceeding. Snohomish County
4 PUD seeks to explore the siting and development of a tidal energy project in Kitsap County.
5 Application at 5. The County is a key stakeholder and regulator of land use, zoning, fish and
6 wildlife, recreation and shoreline activities in the Project area. Snohomish County PUD seeks
7 “proprietary rights to construct, operate, and maintain” a tidal energy project within the waters
8 of Agate Passage in Kitsap County. Application at 5. Kitsap County Government and its
9 citizens will be directly impacted by these actions.

10 The testing and siting of tidal energy devices impacts fish and wildlife resources within
11 the County and impacts shorelines under the jurisdiction of the County. The siting of this
12 project within the County will also limit public access and public recreation opportunities within
13 the Project area.

14 The County has shoreline, land use, and zoning jurisdiction over the Project.
15 Intervention in this proceeding would permit the County to clarify the relationship of the
16 various county land use, shoreline, and zoning regulations that apply to the Project.

17 The Project should serve the public interest by providing regional economic benefits to
18 all jurisdictions directly impacted by its operation. Intervention in this proceeding would permit
19 the County to communicate to the Commission and the Applicant how that goal may be
20 accomplished.

21 After becoming more familiar with the technology and scope of the Applicant’s
22 proposal, the County has determined that it has good cause to seek formal intervention in this
23 proceeding in order to protect the resources of the County and the interests of the County’s
24 citizens.¹

25 _____
26 ¹ The Commission has liberally granted intervention to Washington counties seeking to intervene out-of-time in
FERC proceedings where the applicant’s project is located in the county that is seeking intervention. See
PacifiCorp Project No. 2342-012, Order Granting Intervention of Klickitat and Skamania Counties.

1 The County's Motion is also timely because the Commission's rules provide that any
2 person that files a motion to intervene on the basis of a Draft Environmental Impact Statement
3 ("DEIS") will be deemed to have filed a timely motion in accordance with §385.214, as long as
4 the motion is filed within the comment period for DEIS. 18 CFR § 380.10(a)(1). Because a
5 DEIS for this proposal has not yet been issued, the County's Motion should be considered
6 timely as the Commission's own rule would permit the County's intervention as late as the filing
7 of the DEIS.

8 No disruption of these proceedings will occur as the County is not seeking to change the
9 schedule set forth in the Commission's Notice of Application. Similarly, no prejudice to the
10 existing parties will occur from permitting this intervention.

11 The interests of the citizens of Kitsap County are not adequately represented by any
12 party to this proceeding. The County is in a unique position to communicate the interests and
13 concerns of its citizens to the Commission. Therefore, the Commission should grant the County
14 intervention as a key stakeholder in this proceeding.

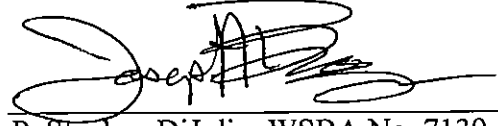
15 Therefore, good cause having been shown, the County respectfully requests pursuant to
16 Commission rules that it be permitted to intervene in the above-entitled proceedings and be
17 made a party thereto. It requests the right to have notice of and appear at any and all hearings or
18 proceedings, to produce evidence and cross-examine witnesses, to be heard through counsel
19 through written and oral argument, to be served henceforth with copies of all pleadings,
20 applications and notices, and for such other participation and relief as may be appropriate under
21 Commission rules.

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RESPECTFULLY SUBMITTED this 20th day of October 2006.

KITSAP COUNTY PROSECUTING
ATTORNEY'S OFFICE
Shelley E. Kneip/Lisa Nickel, Civil Division
WSBA Nos. 22711 & 31221

FOSTER PEPPER PLLC



P. Stephen DiJulio, WSBA No. 7139
Joseph A. Brogan, WSBA No. 30664
Attorneys for Kitsap County

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via e-mail or via U.S. Postal Service, the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 20th day of October, 2006.



Helen M. Stubbert, Legal Assistant to
Joseph A. Brogan, Counsel for
Kitsap County

Submission Contents

Kitsap County's Motion to Intervene Motion_Intervene_Agate_91.pdf.....	1-7
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