

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**AGATE PASSAGE TIDAL
ENERGY PROJECT**

PROJECT NO. 12691-000

**STATE OF WASHINGTON
DEPARTMENT OF FISH & WILDLIFE'S
MOTION TO INTERVENE**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, .214, Washington Department of Fish and Wildlife (Department), hereby moves to intervene in the above-captioned proceeding. The grounds for this motion are:

I.

The names and addresses of the legal counsel for the Department and the Department's main staff contact are below. Copies of all orders, notices, pleadings, and correspondence related to this proceeding should be directed to:

William C. Frymire, Senior Counsel
Attorney General of Washington
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P.O. Box 40100
Olympia, WA 98504-0100

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Major Projects Section Manager
Habitat Program
Washington Dept. of Fish & Wildlife
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II.

The Department is an agency of the State of Washington with jurisdiction over state fish, shellfish, and wildlife resources and charged with the duty of protecting, conserving, managing, and enhancing those resources. Wash. Rev. Code, Title 77. Pursuant to these statutory obligations, the Department brings this motion to intervene on behalf of the citizens of the State of Washington, who, by the law of that state, own the fish and wildlife resources.

III.

The Department is a state fish and wildlife agency which is required to be consulted in determining losses to the fish, shellfish, and wildlife resources caused by construction and operation of hydroelectric projects, and to be consulted in identifying the appropriate measures to preserve and enhance those resources. Fish and Wildlife Coordination Act, 16 U.S.C. § 662(a), (b). The Department is authorized to provide recommended terms and conditions to the Commission that shall be included in any new license unless the Commission finds, in writing, that the Department's recommendations are inconsistent with applicable law. Federal Power Act, 16 U.S.C. § 803(j); 18 C.F.R. § 4.34.

IV.

Public Utility District No. 1 of Snohomish County, Washington, filed an Application for a Preliminary Permit pursuant to Federal Power Act, 16 U.S.C. §§ 791(a) – 825(r), for a project known as Agate Passage Tidal Energy Project.

V.

The proposed Agate Passage Tidal Energy Project would be located in a section of Agate Passage in Puget Sound, between the north end of Bainbridge island and the Kitsap peninsula in Kitsap County, Washington. The proposed Agate Passage Tidal Energy Project would consist of: (1) Tidal in Stream Energy Conversion (TISEC) devices consisting of, (2) rotating propeller blades 3 meters in diameter, (3) integrated generators with a capacity of 50 kW, (4) anchoring systems, (5) mooring lines; and (6) interconnection transmission lines. This project is estimated to have an annual generation of 146.2 gigawatt-hours per year, which would be distributed by the Snohomish County Public Utility District. This Project may adversely affect fish or wildlife under the jurisdiction of the Department.

VI.

For the above reasons, the Department has a significant interest which may be directly affected by the outcome of this proceeding, and this interest is not adequately represented by existing parties. The Department's participation in this proceeding is in the public interest.

VII.

THEREFORE, in order that this proceeding be fully developed in accordance with the applicable law, and that the Commission have before it all the material facts relating to this project, the Commission should grant the Department intervener status.

As a party in the above-entitled proceedings, the Department requests the right to have notice of and appear at any and all hearings or proceedings, to produce evidence and cross examine witnesses, to be heard through counsel in written and oral argument, to be

served with copies of all pleadings, applications, and notices, and for any other such participation and relief as may be appropriate.

DATED this 14 day of August, 2006.

Respectfully submitted:

ROB MCKENNA
Attorney General

S/
WILLIAM C. FRYMIRE, WSBA#16551
Senior Counsel

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service, E-mail or State Campus Delivery

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14 day of August, 2006, at Olympia, WA.

S/
CLARA KIPP
Legal Assistant

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