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July 27, 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street NE Room 1-A
Washington, DC 20426

RE: Deception Pass Tidal Energy Project
FERC Project No. 12687-000

Dear Secretary Salas:

Enclosed for filing with the Commission in the above-captioned matter is the State of Washington, Department of Ecology's Motion for Late Intervention and Certificate of Service.

Thank you for your assistance.

Sincerely,

s/ Brian V. Faller

BRIAN V. FALLER
Assistant Attorney General
(360) 586-6740

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Enclosure

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

**DECEPTION PASS TIDAL ENERGY
PROJECT**

Project No. 12687-000

**STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY'S
MOTION FOR LATE INTERVENTION**

The State of Washington, Department of Ecology (Ecology) respectfully moves the Commission, pursuant to 18 C.F.R. §§ 385.210 and .214, for the authorization to intervene in the above-entitled matter. Ecology is filing this motion for intervention in response to the June 14, 2006, Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests and Comments in Project No. 12687-000. The reasons in support of Ecology's right to participate in this matter are:

1. Ecology is the agency created to administer the State of Washington's Water Management Program, including its comprehensive water quality and water rights programs, and to present the views and recommendations of the state regarding any federal license or permit relating thereto at any proceeding, negotiation, or hearing in such regard conducted by the federal government. WASH. REV. CODE 90.48.260; WASH. REV. CODE 43.21A.020; WASH. REV. CODE 43.27A.090; WASH. REV. CODE 90.03.010; WASH. REV. CODE 90.54.010; WASH. REV. CODE 90.58.010; 16 U.S.C. § 803(a); and 16 U.S.C. § 821. Ecology has the responsibility to issue the section 401 certification under the Clean Water Act which is required for the Commission to issue a permit. *See* WASH. REV. CODE 90.48.260. Ecology also has the responsibility of issuing National Pollution Discharge Elimination System (NPDES) permits and certifying compliance with the Coastal Zone Management Act (CZMA) and enforcing the state Shoreline Management Act (SMA). Ecology also has statutory responsibilities in the matters of environmental review and coordination, pursuant to the State Environmental Policy Act (SEPA). WASH. REV. CODE

86.16.010, *et seq.*; WASH. REV. CODE 90.48.260 ; WASH. REV. CODE 90.48.010 *et seq.*; WASH. REV. CODE 90.58.020, *et seq.* ; and WASH. REV. CODE 43.21C.010 *et seq.*

2. Public Utility District No. 1 of Snohomish County, Washington filed a notice of application pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r) for a project known as Deception Pass Tidal Energy Project. Public Utility District No. 1 of Snohomish County, Washington filed in Docket No. P-12687-000, an application for a Preliminary Permit for a proposed tidal energy project that would consist of: (1) Four Tidal In Stream Energy Conversion (TISEC) devices consisting of; (2) rotating propeller blades twenty meters in diameter; (3) integrated generators; (4) anchoring systems; (5) mooring lines; and (6) interconnection transmission lines. The proposed project is estimated to have an annual generation of 20.7 gigawatt-hours per-year, which would be sold to a local utility. The project is proposed to be located in Deception Pass, between Whidbey Island and Fidalgo Island, in Puget Sound in Skagit and Island Counties, Washington; which are navigable waters within the jurisdiction of the State of Washington under the Clean Water Act.

3. The interest of Ecology as the state regulatory agency that is solely responsible for water quality, water resources, SEPA, SMA, and CZMA compliance is not adequately represented by any other party in the proceeding. It is in the public interest that the state agency responsible for compliance with these laws be heard before the Commission on matters that affect those interests involving this project. Ecology desires to monitor and stay informed about the nature of this project and to participate herein to the full extent authorized under Commission rules so it can fulfill its responsibilities under the above laws.

4. If the preliminary permit will authorize placement of temporary test/pilot units in the waters, such construction may result in a discharge requiring a section 401 certification under the Clean Water Act.

Therefore, good cause having been shown, Ecology respectfully requests pursuant to Commission rules that it be permitted to intervene in the above-entitled proceedings and be made a

party thereto. The lateness of this motion is due to the lack of knowledge of the project prior to the filing deadline. It 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, through written and oral argument, to be served henceforth with copies of all pleadings, applications, and notices and for such other participation and relief as may be appropriate. We request that the following individuals be added to the service list to receive filings and notice on behalf of Ecology for this proceeding and consent to receiving such service electronically.

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RESPECTFULLY SUBMITTED this 27th day of July, 2006.

ROB McKENNA
Attorney General

s/ Brian V. Faller
BRIAN V. FALLER, WSBA #18502
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PROOF OF SERVICE

I hereby certify that on the 27th day of July, 2006, I served copies of State of Washington, Department of Ecology's Motion to Intervene to all parties of record, as set forth in the service list, in accordance with the rules of the Federal Energy Regulatory Commission.

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

DATED this 27th day of July, 2006, at Olympia, WA.

s/ Brian V. Faller
BRIAN V. FALLER
Assistant Attorney General
(360) 586-6740

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