

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

**NARROWS TIDAL ENERGY
PROJECT**

Project No. 12612-000

**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 November 18, 2005, Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests and Comments in Project No. 12612-000. 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 for issuing National Pollution Discharge Elimination System (NPDES) permits, 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. Tacoma Power filed a notice of application pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r) for a project known as Narrows Tidal Energy Project. Tacoma Power filed in Docket No. P-12612-000, an application for a preliminary permit for a proposed tidal energy project that would consist of: (1) units resembling windmills with slow-moving blades, using tidal flow on a vertical shaft with blades, with hour-glass-shaped generators that use pressure differential to move turbines, having installed capacity ranging from 90 to 750 kilowatts, and placed deep enough in the Tacoma Narrows to allow unencumbered marine traffic; (2) a proposed 115-kilovolt transmission line; and (3) appurtenant facilities. The proposed project would be connected to Tacoma Power's existing transmission system. The project is proposed to be located in the southern portion of Puget Sound, an inland marine waterway of the northern Pacific Ocean, Pierce County, 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. On February 22, 2006, the Federal Energy Regulatory Commission issued Order Issuing Preliminary Permit granting Tacoma Power's application for a preliminary permit. 114 FERC ¶ 62,174. If activities taken pursuant to the preliminary permit require the 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. Pierce County is a coastal county for purposes

of the CZMA. Therefore, the placement of temporary test/pilot units in the Tacoma Narrows may also require a CZMA consistency concurrence from Ecology.

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. Ecology requests 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/

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CERTIFICATE OF SERVICE

I, Joan M. Marchioro, hereby certify that on the 27th day of July, 2006, copies were served via electronic or U.S. mail, of State of Washington, Department of Ecology's Motion for Late Intervention to all parties of record, as set forth in the attached service list, in accordance with the rules of the Federal Energy Regulatory Commission.

s/Joan M. Marchioro

JOAN M. MARCHIORO

Service List for P-12612-000

NARROWS TIDAL ENERGY PROJECT

| Principal/Party Name/Address | Representative Name/Address |
|--|---|
| Tacoma Power | Ted Beatty Power Management City of Tacoma, Washington 3628 S 35th St Tacoma , WA 984093115 <i>Via U.S. mail</i> |
| Washington Department of Fish & Wildlife | William Frymire Senior Counsel Washington Attorney General's Office PO Box 40100 Olympia, WA 98501 <i>Via electronic mail: billf@atg.wa.gov</i> |
| Washington Department of Natural Resources Aquatic Resources Program | Elizabeth Ellis Planner Washington Dept. of Natural Resources 1111 Washington ST SE PO Box 47027 Olympia, WA 98513 <i>Via electronic mail: elizabeth.ellis@wadnr.gov</i> |

Submission Contents

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|--|-----|
| Washington Department of Ecology's Motion for Late Intervention MtnToIntervene.pdf..... | 1-5 |
|--|-----|