



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

December 30, 2002

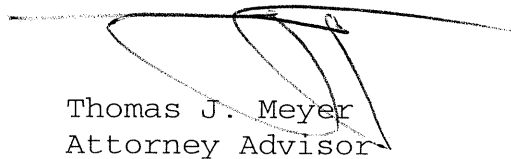
The Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Project No. 201-014 (Blind Slough Project)

Dear Secretary Salas:

Enclosed for filing in the referenced proceeding is the National Marine Fisheries Service's Motion to Intervene. Copies have been served on the Applicant.

Sincerely,



Thomas J. Meyer
Attorney Advisor

Enclosures.: Original + 8 copies

cc:

Director, Office of Energy Projects, Federal Energy Regulatory Commission

Dennis Lewis, Superintendent, Petersburg Municipal Power and Light, Petersburg, Alaska

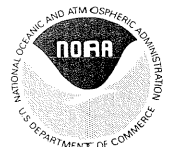
Richard Enriquez, U.S. Fish & Wildlife Service, Juneau

Jonathan M. Kurland, NMFS, Juneau

Brett Smith, Attorney Advisor, NMFS, Silver Spring, MD

Thomas J. Meyer, Attorney Advisor, NMFS, Juneau

Clayton Hawkes, ADF&G - Juneau



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Petersburg Municipal Power and Light)
Application and Applicant Prepared) Project No. 201-014
Environmental Assessment)
Blind Slough Project)
_____)

**NATIONAL MARINE FISHERIES SERVICE
MOTION TO INTERVENE
FINAL TERMS AND CONDITIONS**

Petersburg Municipal Power and Light has submitted a License Application and Applicant Prepared Environmental Assessment (APEA) for the Blind Slough Hydroelectric Project in southeastern Alaska on Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska. The U.S. Department of Commerce, National Marine Fisheries Service (NMFS) hereby submits this motion to intervene and final terms and conditions for the Blind Slough Hydroelectric Project, located on Crystal Creek, Mitkof Island near the City of Petersburg Alaska. This submission responds to the Commission's "Notice of Application and Applicant-Prepared Environmental Assessment Tendered and Accepted For Filing, Notice Soliciting Motions to Intervene and Protests, Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions, Notice Establishing Procedures for Relicensing and Submission of Final Amendments" issued November 18, 2002.

Service of process and other communications concerning this Motion should be made to:

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I. DESCRIPTION OF THE PROJECT

The Blind Slough project, as described in the November 18, 2002, Notice of Application and Applicant-Prepared Environmental Assessment is a 2.4 megawatt (MW) project located on Crystal Creek in Southeast Alaska approximately 16.5 highway miles south of the City of Petersburg on the southern portion of Mitkof Island. The project does not occupy any federal lands. The project generates an average of about 11,308,410 kilowatt-hours (kWh) annually which provides approximately 28 percent of PMPL's energy requirements. The project is also the principal source of water supply for the Crystal Lake Hatchery. Petersburg proposes no new

capacity and no new construction. The primary features of the project include: a dam at the outlet of Crystal Lake; a pumpback system located at the base of Crystal Lake Dam; approximately 4,600 feet of penstock with a static head of 1,256 feet; two powerhouse structures situated near Blind Slough, and a tailrace system providing water to the fish hatchery and returning water to Crystal Creek..

II. AFFECTED FISHERY RESOURCES

Crystal Creek Hatchery has significantly altered the natural fish resources of Crystal Creek by introducing hatchery-reared chinook (*Onchorhynchus tshawytscha*) and coho salmon (*O. kisutch*) and blocking wild fish access to the creek with a weir, located at the upstream end of Reach 3. Crystal Creek, a historic anadromous fish stream still supports juvenile coho salmon, pink salmon (*O. gorbuscha*), chum salmon (*O. keta*), sea-run Dolly Varden char (*Salvelinus malma*), and cutthroat trout (*O. clarkii clarkii*). Steelhead trout (*O. gairdneri*), also present in the stream are considered a remnant population from hatchery production. Some returning adult hatchery produced and possibly wild fish are able to ascend beyond the fish barrier when high flow and high tides coincide and cause Crystal Creek to overtop its banks and flow around the barrier. The project would affect existing and future fishery resources in Crystal Creek because the future of the Crystal Creek Hatchery is not certain. The license should take into account protection of natural fishery resources should the hatchery be decommissioned within the 30 year license renewal period. If the Crystal Creek Hatchery is closed within the 30 year license renewal period, wild salmonid populations should be restored throughout Crystal Creek to the historic upstream limit.

Anadromous fishes in Crystal Creek are important economic, subsistence, sport, and cultural resources to Petersburg residents, visitors, and other Alaska communities. The anadromous fish resources affected by the project are articles of interstate commerce due to the fisheries, tourism industries and other interstate commercial activities they support.

III. PROJECT IMPACTS

This proposed project may negatively affect the anadromous fish species listed above by impairing upstream and downstream fish passage. Altered instream flows may reduce the quality and quantity of important spawning, incubation, and rearing habitat. Mortality and injury of eggs and juveniles anadromous fishes may occur if they become dewatered or stranded in pools or stream margins during flow fluctuations. Affects of flow to spawning and rearing wild anadromous fishes in the lower reach should be considered even though ADF&G is currently blocking their access. Contingencies for instream flow reservations should be made in the event the Crystal Lake Hatchery is closed within the next 30 years.

IV. NMFS' CONCERNS, COMMENTS, AND FINAL RECOMMENDATIONS AND CONDITIONS

NMFS provides the following comments pursuant to section 10(a) of the Federal Power Act (FPA), and NMFS recommendations for the protection, mitigation of damages to, and enhancement of fish and wildlife resources pursuant to the Fish and Wildlife Coordination Act, as amended, and section 10(j) of the FPA. The NMFS reserves the right to provide fishway

prescriptions and related recommended terms and conditions in comments to any subsequent Notice of Offer of Settlement issued by the Commission and based on the results of new information and conclusions developed during the Commission's NEPA analysis, comments received as a result of public agency review, or in connection with the fulfillment of other statutory consultation and review requirements, including consultation under section 304(b) of the Magnuson-Stevens Act, (16 U.S.C. 1801 et. seq. regarding essential fish habitat). We anticipate submitting any modified prescriptions and term and conditions by no later than 60 days after the Commission's issuance of a Draft Environmental Impact Statement.

The applicant, together with NMFS, ADF&G, and the U.S. Department of the Interior, United States Fish and Wildlife Service (USFWS), need to develop project operation measures to protect, mitigate, and enhance resources in the project area. Among these measures are: (1) provision of seasonal instream flows within Crystal Creek to protect anadromous fish; (2) provision of minimum flow fluctuations to protect anadromous fish; and (3) other measures to provide necessary data and monitor environmental compliance measures. NMFS should remain involved in this process to provide comments and recommendations and/or prescriptions to address our concerns.

Listed below are terms and conditions recommended by NMFS, provided pursuant to Section 10(j) of the Federal Power Act.

1. The project shall be operated to provide seasonal instream flows in Crystal Creek to protect all life stages of anadromous and resident fish life stages. Instantaneous instream flow recommendations and requirements for the bypass reach will be finalized by NMFS,

ADF&G, USFWS and FERC staff after five years of sequential data has been collected from a licensee installed and operated continuous recording stream gage that meets U. S. Geological Survey standards. The stream gage will be installed in Crystal Creek, at the lower end of Reach 3, just upstream of the emergency storage pond as a condition of, and at the time of, relicensing. The licensee shall continue operation of the Crystal Lake level recorder and recording of mean daily turbine discharge. An annual report shall be submitted to NMFS that documents the operational status of the gages and provides Crystal Creek stream gage records, including mean daily, and minimum daily instantaneous stage and stream flow. Turbine discharge will be reported as mean hourly flow. Lake level will be reported as mean daily elevation. The Reach 3 gage will be operated indefinitely to ensure license compliance for an instream flow regime unless the licensee and resource agencies agree that the gage is no longer necessary.

Rationale: Seasonal instream flows are necessary to maintain anadromous fish habitat and fish passage in the bypassed reach to the impassable barrier (approximately 1.1 mile upstream) and in reaches affected by the project downstream of the tailrace. Current levels of instream flow may be adequate to meet the needs of anadromous fish, but need to be verified. This will be accomplished with data collected from the stream gage to develop instantaneous flow requirements. This data will be needed in the event the ADF&G fish hatchery is closed during the period of the license and

management of Crystal Creek is based solely on wild anadromous fish production. However, no data is available quantifying instantaneous flow within Crystal Creek in order to set instream flow requirements.

2. Flow discharges shall not lower downstream stage by more than one inch per hour from February 16 to May 31 and two inches per hour from June 1 to February 15.

To achieve these criteria, the licensee will not reduce load as follows.

February 16 to May 31: Controlled load reductions between 1800 kW and 1300 kW will not exceed 25 kW per minute. Controlled load reductions between 1300 kW and 450 kW will not exceed 125 kW per minute.

June 1 to February 15: Controlled load reductions between 1800 kW and 1300 kW will not exceed 50 kW per minute. Controlled load reductions between 1300 kW and 450 kW will not exceed 250 kW per minute.

Rationale: Hydroelectric power projects that operate to follow electric load can cause unstable habitat availability and quality conditions and result in chronic negative impacts to fish and other aquatic organisms. The rate of change limits from February 15 to May 31 is intended to protect emergent chum, coho, and pink salmon, and Dolly Varden char and cutthroat trout fry and eggs. During the remainder of the year, 2 inches per hour maximum rate of change is necessary for rearing juvenile coho salmon, Dolly Varden char, and steelhead and cutthroat trout, which rear in freshwater for at least one

year before migrating to the marine environment.

3. Instantaneous stream flows shall be provided during periods of no power generation including routine maintenance periods, emergency shutdowns, and power grid interruptions in the power grid. Project operation must have the capability to provide water instantaneously to the tailrace at a flow equal to the penstock flow. Project operation should incorporate monitoring of all project components.

Rationale: Brief interruptions in stream flows can significantly affect fish production, as a result of fish stranding, spawning and incubation interruption, and predation.

4. The applicant shall submit plans to NMFS, USFWS, and ADF&G to address the activities listed below. Each plan shall be approved by NMFS, USFWS, and ADF&G, and shall be implemented by the applicant during project operation. NMFS, USFWS, and ADF&G shall be allowed a minimum of 30 days lead time, by notification in writing, to comment and reach agreement with the applicant before plans are submitted to FERC. Final plans approved by NMFS, USFWS, and ADF&G shall be submitted to FERC for written approval at least 30 days before the schedule date to initiate activities related to the plan. If agreement is not reached, FERC shall halt project implementation. Plans shall be developed to address the following objectives:

- Monitoring flows and ramping rates in the anadromous fish stream reaches;
Providing an environmental compliance monitor to ensure effective implementation of all environmental stipulations during operation;
- A Fuel and hazardous substances spill plan shall be developed to prevent and minimize any impacts associated with the handling of hazardous substances during project operation.

Rationale: Monitoring and planning are necessary to ensure environmental compliance of the project.

5. Annual meetings, to be held in Juneau, Petersburg, or other agreed on locations, will be convened by the applicant for NMFS, USFWS, ADF&G, and FERC (at FERC's discretion) to review study results, monitoring plans, and project operations that may affect fish and wildlife, and identify courses of action required based on those results. Meetings shall be held at least 60 days preceding the anniversary date of the license (or other dates mutually agreed upon by the parties). Draft minutes of meetings will be recorded by the applicant and circulated for review, comment, and approval by attendees within 14 days after each meeting. Within 60 days following such consultation, the applicant shall file with FERC, final minutes and other evidence of the consultation with any comments and recommendations made by NMFS, USFWS, ADF&G and the applicant. Additional meetings would be requested by NMFS, USFWS, and ADF&G if project operations

require such meetings.

Rationale: Significant fisheries and wildlife resources exist in the project area. An annual meeting is needed for the applicant and NMFS, USFWS and ADF&G to discuss potential project impacts, fish and wildlife concerns, courses of action, and compliance with license stipulations.

6. NMFS, USFWS, and ADF&G shall be notified within 12 hours from the beginning of any non-compliance event; i.e., and event that does not comply with the Terms and Conditions set forth herein.

Rationale: Non-compliance events such as flow interruptions can affect fish production. If flow interruptions occur, NMFS, USFWS, and ADF&G need to be informed in a timely manner so that the fisheries resources in the project area can receive full consideration and conservation.

XI. CONCLUSION

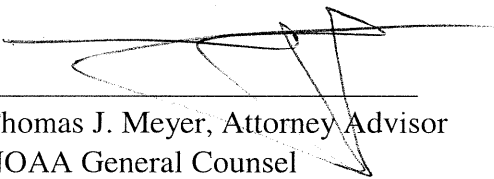
NMFS respectfully requests that the Commission consider the above recommendations and conditions; prepare a draft EIS that adopts and includes in its preferred alternative the final recommendations and conditions set forth above, and subject to any modifications that may be prescribed or recommended by NMFS following conclusion of settlement negotiations and

environmental review; and adopt these same mandatory prescriptions and recommended terms and conditions into any license issued for Blind Slough Hydroelectric Project. NMFS respectfully moves for intervention in this proceeding; and requests that any license amendment proceeding include NMFS's recommended terms and conditions provided pursuant to FPA section 10(j) and Magnuson-Stevens Act section 305(b)(4)(A), and a reservation of authority to prescribe fishways provided pursuant to FPA section 18.

Dated this 30 day of December 2002

Respectfully submitted,

FOR THE NATIONAL MARINE FISHERIES SERVICE

A handwritten signature in black ink, appearing to read 'Thomas J. Meyer', is written over a horizontal line. The signature is stylized and somewhat abstract.

Thomas J. Meyer, Attorney Advisor
NOAA General Counsel
Alaska Region

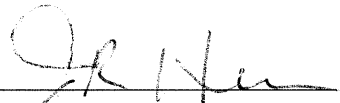
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Project No. 201-014)
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Environmental Assessment)
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_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by Certified Mail a copy of the National Marine Fisheries Service's Preliminary Terms and Conditions the encaptioned action on the applicant to this proceeding, in accordance with the Commission's Rules of Practice and Procedure.

DATED this 30th day of December 2002 in Juneau, Alaska.



Janet R. Herr
Administrative Secretary
National Marine Fisheries Service