

STATE OF OREGON

WATER RESOURCES DEPARTMENT

LICENSE FOR HYDROELECTRIC PROJECT HE 523

A MAJOR PROJECT OF

3683 THEORETICAL HORSEPOWER

WHEREAS, by act of the Legislature of the State of Oregon, ORS 543.010 to 543.620 and 543.990, as amended, hereinafter called the Hydroelectric Act, the Water Resources Commission is authorized to issue licenses to acquire and hold the right to use the waters within the state, and for the construction, operation and maintenance of facilities for the generation and utilization of hydroelectric energy; and

WHEREAS, the City of Walla Walla, Washington, hereinafter called the licensee, whose address is P. O. Box 478, Walla Walla, Washington, 99362, made application in due and proper form to the Commission for a license for a power project designated as Project HE 523 in the records of the Commission; and known as the Twin Reservoirs Hydroelectric Facility, and for authority to construct, maintain and operate certain project works necessary or convenient for the development, transmission and utilization of hydroelectric energy, and for the use of the waters of Mill Creek in the County of Umatilla, State of Oregon, for generation of such electric energy; and

WHEREAS, the project is a major project for the development of 3683 theoretical horsepower with a proposed installed plant capacity of 2050 kilowatts; the licensee has paid to the Director all fees required prior to issuance of this license in accordance with the provisions of the Hydroelectric Act and the rules and regulations of the Commission; and no application for said project, or in conflict therewith, has been filed by any municipal corporation or public utility district; and

WHEREAS, the licensee has filed maps, plans and specifications as required by ORS 543.290, and the Commission finds the project will be well adapted to the utilization of the water power involved and hereby approves same; and

WHEREAS, the licensee on the 24<sup>th</sup> day of May, ~~1989~~, 1990 accepted in writing the terms and conditions of the Hydroelectric Act and of this license for Project HE 523.

NOW, THEREFORE, the Commission hereby issues this license to the licensee for the purpose of constructing, operating and maintaining the project works hereinafter described as necessary or convenient for the development, transmission and utilization of hydroelectric energy, and to appropriate, acquire and hold the right to the use of the waters of Mill Creek to the extent hereinafter set forth. This license is issued on condition that the

licensee shall comply with all the terms and conditions of the Hydroelectric Act and Laws of Oregon relating thereto, with the rules and regulations of the Commission pursuant thereto as fully set forth herein, and shall be subject also to the following express conditions, limitations and exceptions:

ARTICLE 1.

Definition of Project

The word "project" as used in this license means the complete unit, improvement and development, including, among other things, powerhouses, waterwheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, miscellaneous works and structures used in connection with said unit or any part thereof, right of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of any such unit.

ARTICLE 2.

Description of Project

A concise, general description of Project HE 523 is as follows:

The Twin Reservoirs Hydroelectric Facility proposes the use of up to 28 cubic feet per second, measured at the point of diversion from said stream, to develop 3683 theoretical horsepower utilizing a gross head of 1157.3 feet. An existing reinforced concrete dam 20 feet in height located in the NW1/4 NE1/4, Section 22, Township 6 North, Range 38 East, W.M., will divert up to 28 cubic feet per second of water from Mill Creek through 14.5 miles of new 30 inch pipe to a powerhouse located adjacent to the city's municipal reservoirs near Walla Walla, in the State of Washington. A pelton type wheel will drive a 2050 kilowatt generator. The project will connect to existing Pacific Power and Light Company transmission lines crossing the city's property.

Exhibits

The location and character of the project are more specifically shown and described among the following designated exhibits filed to accompany the application and hereby made part of this license.

Initial Statement: Ordinance No. 1, City of Walla Walla.

City of Walla Walla Resolution 4601 approving power purchase agreement with Pacific Power and Light Company. Power purchase agreement signed July 11, 1984.

Contract between the city and the State of Washington for construction costs of municipal water supply facilities.

Exhibits A-E

FERC exemption application.

Exhibit F

Design drawings and specifications.

Water transmission pipeline (Reach A, Oregon).

Sheet 763-C-1.2	Location and index.
Sheets 763-C-2.2 thru 8.2	Pipeline plan and profile.
Sheets 763-C-9.2 thru 11.2	Details.
sheets 763-C-12.2 thru 13.2	Corrosion control and testing.

Twin Reservoirs Hydroelectric Facility.

Sheets 800-C-100 and 101	Title, index and locations.
Sheets 800-C-102 thru 133	Powerhouse.
Sheets 800-C-135 thru 141	Electrical.

Reservoir and intake improvements.

Sheets 820-C-1.0	Location map and index.
Sheets 820-C-2.0 and 3.0	Site plans.
Sheet 820-C-4.0	Details.
Sheets 820-C-5.0 thru 11.0	Screening.
Sheets 820-S-1.0 thru 4.0	Fish ladder.
Sheet 820-E-1.0	Screening electrical detail.

Exhibit G

General and detail location maps.

No substantial changes shall be made in the maps, plans, specifications and statements described and designated as exhibits herein until such changes have been approved by order of the Director. To the extent any changes in maps, plans or specifications are hereafter approved by the Director, the approval of such changes shall be deemed to amend the description of the license accordingly.

ARTICLE 3.

The licensee shall comply fully with the provisions of the order of the Water Resources Commission dated March 13, 1987, and by reference herein made part of this license. A copy of the order is attached for reference.

ARTICLE 4.

The licensee shall furnish the Director with a monthly progress report of construction of Project HE 523. Included in this report shall be a statement of the claimed cost covering each of the accounts involved.

ARTICLE 5.

Period of License

This license is effective as of May 24, <sup>1990</sup>~~1989~~, and shall terminate December 31, 2039.

ARTICLE 6.

Jurisdiction

In consideration of this license and the benefits and advantages accruing thereunder to the licensee, it is expressly agreed by the licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the licensee be prevented from compliance with any provisions of this license or of the Hydroelectric Act by the operation of any valid federal law, or the lawful order, rule or regulation of any federal government agency exercising exclusive jurisdiction in the premises, it shall not be deemed to be in default, or under any liability to the State of Oregon for failure to perform the same during the period of such disability.

ARTICLE 7.

The licensee shall begin construction of the project facilities within one year of the date of issuance of this license; shall complete construction of the project facilities within three years of the date of issuance of this license; and thereafter shall maintain the project facilities in good working order. If the licensee fails to begin or complete construction of the project facilities within the time limits fixed in this license or any lawful extension thereof; or if, after completing construction, fails to use or operate the project facilities for any period of five consecutive years, the Director shall, after due notice, terminate this license by written order. If at any time after two years of nonuse of water for this project, there shall be any conflicting application for or claim to the use of this water, then the licensee may be required by the Director to show cause why the conflicting application should not be granted and this license terminated.

ARTICLE 8.

Water Right Granted

Subject to the provisions of ARTICLE 3 and prior appropriations, this license grants the licensee the right to use up to 25.3 cubic feet per second of water from Mill Creek or the amount, up to 28 cubic feet per second, the city can beneficially use for normal municipal purposes, whichever is more, provided that the right to the use of water will be limited to the amount which the generation facilities will utilize efficiently. When diversions exceed 25.3 cubic feet per second, discharge of water at the city's Twin Reservoir back to Mill Creek or other receiving body, shall be construed as evidence of violation of this license. The priority of the right hereby granted is June 4, 1984. On termination of this license, such right to the use of water shall revert to the public. The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source which may hereafter be made for domestic, municipal, irrigation, or any other beneficial consumptive use.

ARTICLE 9.

Period of Water Right

The right to the use of the waters in connection with the development of this project shall be vested with the license during the time this license or any lawful renewal or extension thereof is in force.

ARTICLE 10.

Annual License Fee

An annual license fee of \$736.60 shall be paid by the licensee on or before January 1 of each calendar year for each calendar year from the first calendar year after the project is completed to 2039; inclusive, being 20 cents for each of the 3683 theoretical horsepower authorized herein for Project HE 523.

ARTICLE 11.

Depreciation

The amount of the annual charges for depreciation expenses to be included in the cost of operation shall be determined on a shrinking fund basis computed by the use of service lives subject to the approval of the Director; provided, that, for the purpose of depreciation, the service lives of the original units of property shall not exceed unexpired period of this license; provided further, that the Director may upon further determination and in his discretion, extend the depreciation period of the original units of the project beyond the life of the license. In determining the amount of the annual charges for depreciation expenses to be included in the cost of operation prior to the time of final action of the Director in fixing the actual legitimate cost of the original legitimate cost of the items in each account number as set forth in the "Initial Cost Statement" to be filed by the licensee, as provided for in said ARTICLE, shall be used.

ARTICLE 12.

Determination of Cost of Project

- a. Initial Cost Statements: The licensee shall file within one year after the time the project is ready for service, an initial statement, under oath, with one additional conformed copy thereof showing the amount claimed by the licensee as the actual legitimate cost of the project, as defined in subsection 2 of ORS 543.010, on forms as prescribed or otherwise approved by the Director.

Similar statements with respect to net additions and betterments to the project shall be filed in the same manner before April 1 of each and every succeeding year during the term of this license or any lawful extension thereof, unless the Director shall otherwise direct.

- b. Substance: Each statement so filed shall give full, adequate and complete information with respect to the cost of the project or additions and betterments thereto as the case may be. Any statement which does not contain sufficient information will be returned to the licensee for such additional information as the Director may deem necessary.
- c. Report on Project: When a satisfactory statement shall have been filed with the Director, the Director's representatives will make an audit on the accounts, will analyze the books, cost records, engineering reports and other records supporting such statements or pertaining to the project, will inspect the project works, and will prepare a report setting forth their findings and recommendations with respect to the costs claimed.
- d. Service of Report: Copies of such report and of the final report provided for in subsection (g) of this ARTICLE 12, will be served by certified mail upon the licensee at its principal place of business in Oregon and copies will be sent to such other parties as the Director may prescribe.
- e. Time of Filing Protests: Thirty days after service thereof will be allowed to the licensee within which to file a protest to such report. If no protest is filed within the time allowed, the Director shall issue such orders as may be appropriate. If a protest is filed, a hearing will be ordered, such hearing to be held within 90 days from filing of the protest with the Director.
- f. Burden of Proof: The burden of proof to sustain each item of the statement of claimed costs as filed shall be upon the licensee and only such items as are in the opinion of the Director supported by satisfactory proof may be entered in the project accounts of the licensee.
- g. Finding and Final Statement: Final action by the Director will be in the form of a finding and order entered in the records of the Water Resources Department and served upon the licensee and such other parties as the Director may prescribe. The licensee shall thereafter file a final statement, under oath, in duplicate, showing the net investment revised in conformity with the order of the Director, together with a statement showing that its records have been revised in conformity with such order.

#### ARTICLE 13.

##### Reasonable Rate of Return

A reasonable rate of return on the net investment in the project shall be that established by the Public Utility Commissioners for Electric Utilities, subject to the approval of the Director.

ARTICLE 14.

Amortization Reserve

Any earnings in excess of said reasonable rate of return shall be set up in a Miscellaneous Reserve Account, as credit to the Amortization Reserve, pursuant to ORS 543.510 of the Hydroelectric Act, to be disposed of in accordance with order of the Director.

ARTICLE 15.

Accounting

The licensee shall maintain an account of the actual cost of the construction of the project facilities and any additions thereto, and shall, under oath, provide such accounting to the Director upon his request.

ARTICLE 16.

Bond of License to Protect Laborers and Materialmen

Before entering into the construction of this project, the licensee shall execute a bond as required by ORS 543.560 to be approved by the Director, and by the Attorney General of Oregon as to form, which bond shall be in addition to and not in lieu of any other liability of the licensee principal.

IN TESTIMONY OF ACCEPTANCE of all the terms and conditions of this license,\* ORS 543.010 t 543.620 and 543.990, and the rules and regulations of the Commission made pursuant thereto, the licensee has affixed his signature this 23<sup>rd</sup> day of Feb, 1989. 1990

\* EXCEPT AS STATED IN ATTACHED COVER LETTER DATED 2/22/90.

Clayton D. Kinzer  
LICENSEE City Manager

IN WITNESS HEREOF, the Director of the Water Resources Department of Oregon has signed his name at Salem, Oregon this 24<sup>th</sup> day of May, 1989. 1990

William H. Young  
WILLIAM H. YOUNG, DIRECTOR