



Portland General Electric Company
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July 10, 2007

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WATER RESOURCES DEPT
SALEM, OREGON

Phil Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Re: Request for Basin Plan Exception Pursuant to ORS 536.295 in Connection with Application for Reauthorization of the Portland General Electric Clackamas Hydroelectric Project

Dear Director Ward:

Portland General Electric Company (PGE) hereby requests the Oregon Water Resources Commission grant an exception to the Willamette Basin Program pursuant to ORS 536.295(1). The exception would allow the Oregon Water Resources Department (OWRD) to consider an application for a new, time-limited water right for hydroelectric use in connection with state reauthorization of PGE's existing Clackamas Project (Project). This request is submitted in accordance with a comprehensive Settlement Agreement entered into among numerous entities involved in state reauthorization and the federal re-licensing process administered by the Federal Energy Regulatory Commission (FERC).

A copy of the complete Settlement Agreement is on record with OWRD and is incorporated by reference into this request. Additionally, for your convenience, we have enclosed copies of the water rights component of the overall Settlement Agreement and related Implementation Plan. These documents provide additional background information in support of the basin plan exception request.

I. Background

The Project currently has four state-issued time-limited hydroelectric (HE) water rights that are in the process of state reauthorization pursuant to ORS Chapter 543A. In addition, portions of the Project are authorized under pre-1909 unadjudicated water right claims that are not subject to reauthorization requirements. The pre-1909 claims were recorded and preserved with OWRD through the timely filing of Surface Water Registration (SWR) forms.

As a result of extensive negotiations leading to the Settlement Agreement, the parties agreed that it would be desirable to combine these various existing state authorizations into a single time-limited hydroelectric water right that would be issued by OWRD upon completion of

the reauthorization process. Dubbed the "super HE" by the settlement parties, this single water right is intended to clarify the water use authorization for the project and simplify future administrative actions related to the Project. This approach will also provide a vehicle to implement instream flow protection measures recommended as part of the Settlement Agreement.

Under the plan, PGE will assign portions of its pre-1909 claims to the state for conversion to Instream Water Rights. In exchange, PGE will apply for new water rights (as part of the "super HE") to replace the pre-1909 water assigned to the state. This trade will allow PGE to continue current levels of power production, but will give the potential long-term benefit of a more senior priority date for the Instream Water Rights if and when the pre-1909 claims are approved in the future as part of a general stream adjudication for the Willamette Basin. The settlement plan also preserves PGE's ability to rely upon the more senior priority dates of the remaining portions of its pre-1909 claims following adjudication by allowing for cancellation of the duplicate, junior state water rights at such time. Finally, the plan allows PGE to include a request for additional, new water use to reflect increased power production capacity in the Project.

To implement this settlement plan, PGE must submit a revised application for reauthorization of the Project reflecting the terms and conditions of the agreement and requesting issuance of the new time-limited water right. However, in order for OWRD to accept and process the revised application, the Water Resources Commission must grant an exception to the current provisions of the Willamette Basin Plan regarding allowable classifications for new water uses in the Clackamas Sub-basin.

As you know, a basin program provides guidance to OWRD in considering applications for new water rights in any given basin. In particular, before accepting any new application for review, OWRD must first determine that the proposed use is allowed (or "classified") under the basin program, as required under ORS 536.300 – 536.340. In this case, applicable classifications within the Clackamas River sub-basin of the Willamette Basin Program do not include new hydroelectric use. Therefore, an exception must be granted by the Water Resources Commission before OWRD may consider PGE's revised reauthorization application.

II. Justification for Basin Program Exception

A. Statutory Authority

Pursuant to ORS 536.295(1), an exception may be granted by the Water Resources Commission if the use:

- (a) Will be of short duration during each year;
- (b) Will be for a continuous period of no longer than five years;
- (c) Is largely non-consumptive in nature and not likely to be regulated for other water rights;
- (d) Is necessary to ensure public health, welfare and safety;

- (e) Is necessary to avoid extreme hardship;
- (f) Will provide a public benefit such as riparian or watershed improvement; or
- (g) Is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program.

In addition, ORS 536.295(4) requires a finding that the proposed exception is otherwise consistent with the "general policies established in the applicable basin program."

As described further below, the reauthorization package proposed by PGE and approved by parties to the settlement agreement includes components that would qualify under subsections (a), (c), (f) and (g), and is fully consistent with the applicable general policies.

B. Project Summary

PGE is applying to reauthorize its Clackamas hydroelectric project as shown on the attached map, Attachment 1. The project facilities are described in detail in Attachment 2, and include developments at: Timothy Lake, Oak Grove, North Fork, Faraday, and River Mill. The company's initial application for reauthorization was submitted on October 22, 1998. As noted above, PGE has substantially revised the application to reflect the comprehensive Settlement Agreement.

1. Timothy Lake Development

Storage of 69,000 acre feet of water with a priority date of March 18, 1953, in Timothy Lake, located in the NE ¼ NE ¼ Section 27, Township 5 South, Range 8 East, W.M.;

Release of water from Timothy Lake at a rate not to exceed 300 cfs above inflow, for power purposes at Oak Grove, North Fork, Faraday and River Mill powerhouses;

10 cfs of water released from Timothy Lake with a priority date of March 18, 1953, for 108 theoretical horsepower for backup power supply at Timothy Lake Lodge.

2. Oak Grove Development

Storage of 300 acre feet of water with a priority date of October 22, 1998, in Lake Harriet located in the NW ¼ SW ¼ Section 4, Township 6 South, Range 7 East, W.M.;

600 cfs of water with a priority date of October 22, 1998, diverted from Oak Grove Fork at Lake Harriet, located in the NW ¼ SW ¼ Section 4, Township 6 South, Range 7 East, W.M.; for power purposes at Oak Grove powerhouse;

2.5 cfs of water with a priority date of October 22, 1998, diverted from Three Lynx Creek, in the SE ¼ SE 14 Section 16, Township 5 South, Range 6 East, W.M., for fire protection and station use at the Oak Grove powerhouse;

Water, for power purposes to replace water assigned to instream bypass flows from Lake Harriet to the Oak Grove Powerhouse in the SW ¼ NW ¼ Section 22, Township 5 South, Range 6 East, W.M. with a priority date of October 22, 1998, in the amounts of: 70 cfs from January 1

to March 31, 80 cfs from April 1 to September 30, 100 cfs from October 1 to October 15, 80 cfs from October 16 to December 15, and 70 cfs from December 15 to December 31;

Storage of 252 acre feet of water, with a priority date of March 18, 1953, in Frog Lake located in the NE ¼ SW ¼ Section 35, Township 5 South, Range 6 East, (W.M.).

3. North Fork Development

19,500 acre feet of storage with a priority date of September 26, 1955, in North Fork Reservoir located in the NW ¼ NE ¼ Section 11, Township 4 South, Range 4 East, W.M.;

5400 cfs of water with a priority date of September 26, 1955, from Clackamas River at the North Fork Dam in the NW ¼ NE ¼ Section 11, Township 4 South, Range 4 East, W.M., and to impound all, or any part of said water in the North Fork Reservoir;

654 cfs of water with a priority date of October 22, 1998, from the Clackamas River at the North Fork Dam in the NW ¼ NE ¼ Section 11, Township 4 South, Range 4 East, W.M., and to impound all, or any part of said water in the North Fork Reservoir.

4. Faraday Development

2650 cfs of water with a priority date of September 26, 1955, from the Clackamas River at Faraday Diversion Dam in the SW ¼ NE ¼ Section 3, Township 4 South, Range 4 East, W.M. and to impound all or any part of said water in the Faraday Diversion Dam reservoir,

2370 cfs of water with a priority date of October 22, 1998, from the Clackamas River at Faraday diversion dam, and to impound all, or any part of said water in the Faraday Diversion Dam reservoir;

684 cfs of water with a priority date of October 22, 1998, from the Clackamas River at Faraday diversion Dam in the SW ¼ NE ¼ Section 3, Township 4 South, Range 4 East, W.M. and to impound all, or any part of said water in the Faraday Diversion Dam reservoir.

5. River Mill Development

4641 cfs of water with a priority date of October 22, 1998, from the Clackamas River at River Mill Dam in the NW ¼ of the NW ¼ of Section 20, Township 3 South, Range 4 East, W.M. and to impound all, or any part of said water in Estacada Lake ,

950 cfs of water with a priority date of March 4, 1960, from the Clackamas River at River Mill Dam, and to impound all, or any part of said water in Estacada Lake.

C. Analysis

1. Oak Grove

Water for the Oak Grove Development is used under an unadjudicated pre-1909 claim (SWR 387). Pursuant to longstanding practice and legal advice, the Department does not enforce for or against such claims until they are finally determined in an adjudication. PGE's request to divert 602.5 cfs of water and to store 300 acre feet in Lake Harriet duplicates its pre-1909 claim. This request would not increase water use compared to current practice. To the extent that SWR 387 is allowed in a future adjudication, the junior water rights would be canceled at the time of

the final decree, so that the total water allowed does not exceed the total plant capacity of the Project as of today.

PGE proposes that the duplication of SWR 387 should be granted an exception to the basin program based on ORS 536.295 (1)(g) because the use is of an unusual nature not likely to recur in the basin, and unlikely to have been considered by the commission in classifying the uses presently allowed in the applicable basin program.

Water diverted from Lake Harriet bypasses about five miles of the Oak Grove Fork and five miles of the Clackamas River before it returns to the Clackamas below the Oak Grove powerhouse. Under the new license, PGE will increase flows in the Oak Grove bypass reach, and will pass additional flows at times of winter flooding and snowmelt runoff to reflect natural conditions. PGE has also agreed to assign a portion of its pre-1909 water claim to instream uses. This assignment will ensure that instream flows will have a senior priority date compared to existing and future uses. PGE requests that water assigned to instream uses be replaced with an equal amount of water, with an October 22, 1998, priority date. After mitigating for the effects on the Oak Grove Fork and Clackamas River that are dewatered by the project, PGE returns water from the powerhouse to the river at river mile 46.8, so that the water can be reused downstream.

PGE proposes that water for power purposes to replace water assigned to instream bypass flows should be granted an exception to the basin program based on ORS 536.295(1)(f) because the use will provide a long-term public benefit by offering a more senior priority for instream flows.

2. North Fork Development

Water is stored in the North Fork reservoir and is used in the powerhouse at the base of the dam. A more efficient turbine, with greater hydraulic capacity, has been installed at the powerhouse which will enable the project to use an additional 654 cfs of water at times of peak flows. Since water year 1970, flows greater than the 5400 cfs currently allowed by water rights for the North Fork Project have occurred 9.6% of the time on the Clackamas River at River Mill. At these times, water from the North Fork reservoir must spill over the top of the dam. Flows greater than 6054 cfs occurred 7.4% of the time on the Clackamas River at River Mill. At those times, water would again spill over the North Fork Dam. All Clackamas River flows through the North Fork Reservoir and powerhouse go directly back into the Clackamas River and are available for other downstream uses.

PGE proposes that 654 cfs of additional water at the North Fork Powerhouse should be granted an exception to the basin program based on ORS 536.295(1)(a) and (c) because the time for using these additional flows would be of short duration annually, and the flow of water through the powerhouse is largely non-consumptive and not likely to be regulated for other water rights.

3. Faraday Development

a. Pre-1909 Claims

About one-half of the water in the Faraday Development is used under an unadjudicated pre-1909 claim, SWR 388. PGE's request for 2370 cfs of water is a duplication of its existing claim and would not modify current practices. To the extent that SWR 388 is allowed in a future adjudication, the junior water rights shall be canceled at the time of the final decree, so that the total water allowed does not exceed the total plant capacity of the Project as of today.

PGE proposes that the duplication of SWR 388 should be granted an exception to the basin program based on ORS 536.295 (1)(g) because the duplicative, but not additive nature, of the hydroelectric use is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program.

b. Increased Efficiency/Power Production

A more efficient turbine with increased hydraulic capacity has been installed at the Faraday powerhouse that will enable the project to use an additional 684 cfs of water at times of peak flows. Water diverted at the Faraday diversion dam, bypasses about 2.3 miles of the Clackamas River before it returns below the Faraday powerhouse to Estacada Lake. Under the proposed reauthorization, PGE will increase flows in the Faraday bypass reach to 270 cfs. When flows are greater than 5270 cfs, PGE will first pass additional flows to meet the State's instream water right of 400 or 640 cfs. Then it will increase flows through the turbines to a maximum capacity of 5704 cfs. After mitigating for the effects on the Clackamas River that are dewatered by the project, PGE returns the water through the Faraday powerhouse to the river at river mile 25.3, so that the water can be reused downstream.

Since water year 1970, flows greater than 5660 cfs have occurred 8.7% of the time on the Clackamas River at River Mill. At these times PGE would be able to increase flows through the turbines up to the capacity of the plant. Flows greater than 6344 cfs would again spill over the diversion dam. Those flows occurred 6.7% of the time on the Clackamas River at River Mill. Thus, the time for using these additional flows would be of short duration during each year.

PGE proposes that 684 cfs of additional water at the Faraday Powerhouse should be granted an exception to the basin program based on ORS 536.295(1)(a) because the time for using these additional flows would be of short duration annually.

4. River Mill Development

The River Mill Development is a run-of-the river project, with most of the water used under an unadjudicated pre-1909 claim, SWR 386. The request for 4641 cfs of water duplicates PGE's pre-1909 claim and would not increase water use compared to current practice. To the extent that SWR 386 is allowed in a future adjudication, the junior water rights shall be canceled at the time of the final decree, so that the total water allowed does not exceed the total plant capacity of the Project as of today. PGE has also agreed to operate the River Mill powerhouse to

match the flow that would exist if the North Fork, Faraday, and River Mill dams did not exist. The River Mill unregulated inflow is in effect, the same as the North Fork Reservoir inflow. Water released through the River Mill Powerhouse flows directly to the Clackamas River, and is available for other downstream uses.

PGE proposes that the duplication of SWR 386 should be granted an exception to the basin program based on ORS 536.295 (1) (c) and (g) because the flow of water through the powerhouse is largely non-consumptive and not likely to be regulated for other water rights, and the duplicative, but not additive nature, of the hydroelectric use is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program.

D. General Policies of the Willamette Basin Program

Pursuant to ORS 536.295(4), before granting a basin program exception, the Commission must also evaluate whether the proposed use is consistent with the general policies of the Willamette Basin Program. The applicable general policies are described in OAR 690-502-0020:

- (1) Surface water allocation:
 - (a) Protect undeveloped streams with instream values for public instream uses;
 - (b) Seek a balance in the future appropriation of water between instream and total out-of-stream uses on those streams already significantly developed for out-of-stream purposes;
 - (c) Preserve opportunities for future economic development by reserving water for future use;
 - (d) Minimize the likelihood of over-appropriation due to new uses;
 - (e) Manage stored waters which have been released for instream purposes to meet flow needs reflected in established instream water rights;

We believe the innovative concepts reflected in the Settlement Agreement and revised reauthorization application are fully consistent with the above general policies of the Willamette Basin Plan. In particular, the plan offers potential long-term public benefits for enhanced protection of Instream Water Rights by assigning portions of PGE's pre-1909 claims for that purpose. The replacement water authorized for power use with a junior priority date will not alter the status quo with respect to actual diversions and water use. To the extent that the application seeks authorization for increase power production, the proposed use is consistent with the balance between economic use and instream protection reflected in the general policies.

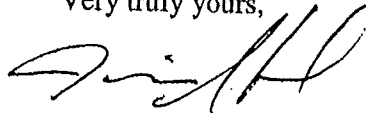
Conclusion

This request for a basin program exception is prompted by a comprehensive Settlement Agreement reached among numerous parties involved in the process of state reauthorization and federal re-licensing of PGE's existing Clackamas Hydroelectric Project. The Settlement plan includes provisions for protecting and enhancing instream flow by assigning portions of PGE's

pre-1909 claims to the State of Oregon for Instream Water Rights, while keeping the project whole by replacing the senior water right claims with water allocated under a new, time-limited water right consolidating all aspects of the project into a single water right. As outlined above, the proposed exception is consistent with criteria of ORS 536.295, and the general policies of the Willamette Basin Program. Therefore, we ask the Water Resources Commission to approve the exception and allow further consideration of the reauthorization application.

Thank you for your assistance in forwarding this request to the Commission.

Very truly yours,



Julie A. Keil, Director
Hydro Licensing