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October 4, 2007

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

RE: **Shanker's Bend Hydroelectric Project**
FERC Project No. 12804-000

Dear Secretary Salas:

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

Thank you for your assistance.

Sincerely,

s/ Brian V. Faller

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

BVF:JLD
Enclosure

c: Service List

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

Shanker's Bend Hydroelectric Project | Project No. 12804-000

**STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY'S MOTION TO
INTERVENE AND COMMENTS ON APPLICATION**

I. MOTION TO INTERVENE

The State of Washington, Department of Ecology (Ecology) respectfully moves the Federal Energy Regulatory Commission (FERC), pursuant to 18 C.F.R. §§ 385.210 and .214, for the authorization to intervene in the above-entitled matter for a preliminary permit and all related proceedings. Ecology is filing this motion for intervention in response to the August 14, 2007, Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests and Comments in Project No. 12804-000. 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, 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; Wash. Rev. Code 90.48.260; Wash. Rev. Code 90.48.010.; Wash. Rev. Code 90.58.020; and Wash. Rev. Code 43.21C.010.

2. The proposed project would consist of: (1) a proposed 260-foot-high, 1,200-foot-long dam; (2) a proposed 18,000-acre impoundment with an average depth of 1,289 feet, and gross storage capacity of 1.7-million acre-feet; (3) a proposed penstock; (4) an existing 1,700-foot-long railroad tunnel enlarged to 20 feet in diameter; (5) a proposed powerhouse containing two generating units with an installed capacity of 42 megawatts; (6) a proposed 7.5-mile-long, 115 kV transmission line; and (7) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 280,000 megawatts-hours. The applicant plans to sell the generated energy.

3. The interest of Ecology as the state regulatory agency that is solely responsible for issuing the 401 certification finding consistency with water quality standards, concurring with a CZMA consistency determination, and complying with the other authorities identified above 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 law so it can fulfill its responsibilities under the above laws.

4. If the preliminary permit will authorize placement and/or operation of temporary structures in the waters, such construction or operation 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. 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.

Brian Faller, Assistant Attorney General
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II. COMMENTS ON THE PRELIMINARY PERMIT APPLICATION

For the preliminary permit, Ecology believes the following items, and the likelihood and magnitude of impacts associated with these items, need to be addressed as part of the feasibility study.

In general, has the fish passage issue been resolved for Enloe dam? If not, this issue will need to be addressed in the feasibility study.

For each of the three proposed scenarios:

1. What are the changes to fish habitat (e.g., flow), types of fish, and fish uses (spawning, rearing, migration)?
2. Identify areas of inundation of existing mines, mine tailings or mine tailing disposal sites by project waters. The extent of leaching or undermining of slope and the resulting increase in contaminants released to the waters need to be discussed. Need to address toxics (including arsenic) and turbidity.
3. Need to estimate the amount of wetlands (and riparian areas) gained or lost, both types and quantities, by inundation.
4. Need to address the amount of riparian vegetation lost by slope undermining and the resulting landslides.
5. Estimate the amount of water-related recreation lost and gained (e.g., boating, fishing, and gold panning).

6. Identify the approximate magnitude of changes to water temperatures, including both lake and river.
7. How will the amount of aquatic nuisance species change? Include impacts of increased boating and slower moving waters.
8. Discuss the approximate change in total dissolved gas (TDG) below the dam.

Ecology reserves the right to modify this list in light of new information or analysis.

RESPECTFULLY SUBMITTED this 4th day of October, 2007.

ROBERT M. MCKENNA
Attorney General

s/ Brian V. Faller
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(360) 586-6740

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PROOF OF SERVICE

I hereby certify that on the 4th day of October, 2007, I served copies of the State of Washington, Department of Ecology's Motion to Intervene and Comments on Application 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 4th day of October, 2007, at Olympia, Washington.

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