MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND
THE STATE OF OREGON
BY AND THROUGH ITS DEPARTMENTS OF FISH & WILDLIFE, LAND CONSERVATION & DEVELOPMENT, ENVIRONMENTAL QUALITY, STATE LANDS, WATER RESOURCES, PARKS & RECREATION, AND ENERGY

The State of Oregon (Oregon) by and through its Department of State Lands, its Department of Water Resources, its Department of Fish & Wildlife, its Department of Land Conservation and Development, its Department of Environmental Quality, its Department of Energy, and its Parks and Recreation Department and the Federal Energy Regulatory Commission (Commission), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

A. The Commission issues licenses under Part I of the Federal Power Act, 16 U.S.C. §§ 791a *et seq.* (FPA) for non-federal wave energy projects. This includes, but is not limited to, wave energy projects that are proposed to be located in the Territorial Sea of Oregon. The Commission's staff has established several possible means of authorizing wave energy projects, including procedures to allow shorter-term, experimental projects with environmental safeguards.

B. Oregon has authorities with respect to wave energy projects that are proposed to be located in its Territorial Sea, including authorities under the following federal laws: the Coastal Zone Management Act 16 USC §§ 1451 *et. seq.* (CZMA); the Clean Water Act 33 USC §§ 1251-1387, the National Historic Preservation Act 16 USC §§ 470 *et. seq.* (NHPA), as well as the FPA. Oregon state law also includes provisions applicable to wave energy projects that are proposed to be located in its Territorial Sea, including proprietary authorization, regulatory authorization to use waters of the state, and regulatory authorization to use the ocean shore.

C. The parties have a mutual interest in the timely processing of applications for regulatory and other approvals required for wave energy projects in the Territorial Sea of Oregon to promote clean, renewable sources of energy, and Oregon has stated its intent to be a leader in promoting the development of wave energy projects. The parties also desire to create a process to make it possible for developers of wave energy projects to establish short-term or experimental wave energy projects within the Territorial Sea of Oregon in order to study, monitor, and evaluate the environmental, economic, and cultural effects of wave energy projects. The parties intend that this information will serve as a basis for decision-making concerning requests for longer-term authorizations for wave energy projects in the Territorial Sea of Oregon.

D. The purpose of this Memorandum of Understanding is to coordinate the procedures and schedules for review of wave energy projects in the Territorial Sea of Oregon and to ensure that there is a coordinated review of proposed wave energy projects

that is responsive to environmental, economic, and cultural concerns while providing a timely, stable, and predictable means for developers of such projects to seek necessary approvals.

Now, therefore, the Commission and Oregon agree that:

1. Oregon supports the efforts by Commission staff to establish procedures to allow shorter-term, experimental wave energy projects with environmental safeguards, including the pilot project license process, which may, in appropriate cases, allow the licensing of wave energy projects by the Commission in a significantly shorter period than a full licensing process would require. Oregon also supports the Commission's conclusion that a license may not be required under Part I of the FPA in certain limited circumstances for the testing of new technology. The parties agree that these and other approaches may be appropriate as short-term means of allowing wave energy projects to proceed on an experimental or pilot basis while additional environmental and other data concerning the effects of such projects are gathered. The parties also agree that these approaches must incorporate safeguards and limitations to ensure that the environmental, economic, and social effects of any experimental or pilot projects will not have a significant adverse effect on the environment.

2. When either the Commission or Oregon becomes aware that a prospective applicant may seek a pilot project license, preliminary permit, or other license from the Commission to study or develop a wave energy project in the Territorial Sea of Oregon, the party obtaining the information promptly will notify the other party, to enable the parties to begin planning how to coordinate review of the project. In such cases, the Commission and Oregon will work together, along with the prospective applicant and other participants in the Commission's prefiling process (where applicable), to identify potential issues, and to determine what information is needed and what studies must be conducted in order to permit the Commission and Oregon to undertake required reviews of proposed projects.

3. Where a prospective applicant seeks to use the pilot project license process or any other licensing process for wave energy projects to be located in the Territorial Sea of Oregon and subject to the Commission's licensing jurisdiction, the Commission and Oregon agree to confer, as early in the process as possible, in order to reach agreement on a schedule for processing the application as expeditiously as possible. Such a schedule, to be issued by the Commission, will include milestones for the Commission's review of the application and issuance of an environmental document, and the issuance by Oregon of any certifications or concurrences that may be required from it under federal law. Oregon will, to the extent possible, complete any actions required of it within the timeframes established in the schedule and, in any case, will complete such actions by any deadline established by law. The parties further agree that they will use their best efforts to encourage other federal agencies and stakeholders that have an interest in a proposed wave energy project in the Territorial Sea of Oregon to help develop and comply with a coordinated schedule for the review of the project.

4. The parties agree that they will work to coordinate their environmental reviews of any proposed wave energy projects in the Territorial Sea of Oregon subject to the Commission's licensing jurisdiction so that documents prepared by the Commission for review under the National Environmental Policy Act 42 USC §§ 4231 *et seq.* (NEPA) may be used by Oregon agencies to satisfy the requirements of the Oregon Territorial Sea Plan and other similar requirements that are enforceable policies of Oregon's approved Coastal Management Program under the CZMA, or any other actions to be taken by the State. The parties also agree to consult with stakeholders, including the project developers, concerning the design of studies and environmental measures (including adaptive management measures) for wave energy projects in the Territorial Sea of Oregon.

5. The parties acknowledge that Oregon intends to prepare a comprehensive plan for the siting of wave energy projects in the Territorial Sea of Oregon. If Oregon develops and files with the Commission a comprehensive plan (Oregon Plan) for the siting of wave energy projects in the Territorial Sea of Oregon under section 10(a)(2)(A)(ii) of the FPA and 18 C.F.R. 2.19, the Commission will, in issuing any preliminary permit, pilot project license, or other license for a wave energy project in Oregon's Territorial Sea, consider the extent to which the proposed project is consistent with the Oregon Plan. In addition, the Commission will consider any terms and conditions that are recommended by Oregon under section 10(a)(3) of the FPA to ensure consistency with the Oregon Plan. Moreover, without limiting the foregoing, the Commission will inform parties seeking a preliminary permit, pilot project license, or other authorization for a wave energy project in the Territorial Sea of Oregon of any comprehensive plan developed and filed by Oregon under section 10(a)(2)(A)(ii) of the FPA, and encourage the parties to reach agreement with Oregon to the extent practicable. The Commission recognizes that Oregon may also submit such a comprehensive plan to the Office of Coastal Resource Management of the National Atmospheric and Oceanic Administration of the U.S. Department of Commerce (OCRM) for approval as an amendment to Oregon's approved coastal management plan. Such a comprehensive plan may identify only a limited number of locations within the Territorial Sea of Oregon where the State believes it is appropriate to locate wave energy projects until further information concerning the effects of such projects is developed. Additional locations may be identified in subsequent phases of the comprehensive plan.

6. Oregon and the Commission recognize that any pilot project license or other license issued by the Commission for a wave energy facility in Oregon's Territorial Sea must include those terms and conditions that are appropriate to protect, mitigate damages to, and enhance fish and wildlife resources.

7. Oregon and the Commission will designate management contacts to work to resolve any procedural issues that may arise in the review of a specific proposed wave energy project in Oregon's Territorial Sea. However, nothing in this MOU shall compromise or affect the rights of any party to seek relief through any available administrative or judicial process.

8. Nothing in the Memorandum of Understanding requires any party to take any action that is contrary to applicable federal or state law or regulation.

9. This MOU is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Any such endeavors will be outlined in separate documents that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. In addition, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.

10. This MOU will take effect when signed by all the parties hereto. This MOU may be modified at any time by the mutual written agreement of the parties. The Commission or any other party may terminate the same upon thirty (30) days written notice to the other party. Any State agency may terminate its involvement in this MOU upon thirty days notice to the Commission and the Oregon Governor's Natural Resources Office. During this period, the parties shall make good-faith efforts to resolve any disagreement.

Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission

3/18/08
Date

Theodore R. Kulongoski
Governor
State of Oregon

3/26/08
Date

Louise C. Solliday
Director
Oregon Department of State Lands

3/26/08
Date

Phillip C. Ward
Director
Oregon Water Resources Department

3/26/08
Date

Roy Elicker
Director
Oregon Department of Fish & Wildlife

3/26/08
Date

Richard M. Whitman
Director
Oregon Department of Land Conservation and Development

3/26/08
Date

Dick Pedersen
Director
Oregon Department of Environmental Quality

3/26/08
Date

Michael W. Grainey
Director
Oregon Department of Energy

3/26/08
Date

for Tim Wood
Director
Oregon Parks and Recreation Department

3-26-08
Date