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FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426
July 18, 2018

Public Utility Commission of Oregon
Administrative Hearings Division

OFFICE OF ENERGY PROJECTS

Project No. 14616-000
Pacific Marine Energy Test Center-South
Energy Test Site
Oregon State University

Dr. Burke Hales
Oregon State University
104 CEOAS Administration Building
Corvallis, OR 97331

RE: Comments on Draft License Application for the P MEC-SETS Project

Dear Dr. Hales:

Thank you for providing us with a copy of the draft license application (DLA) that contains your draft Applicant Prepared Environmental Assessment (APEA) for the P MEC-SETS Project. We reviewed the application relative to the Alternative Licensing Process (ALP) regulations in 18 CFR §4.34 and the contents of the license application as outlined in 18 CFR §4.41.

Your DLA includes all of the applicable exhibits; however, we find that a deficiency (Appendix A) would need to be addressed in your final license application and additional analysis and information is needed in the DLA and APEA to analyze the environmental effects of your project (Appendix B).

If you have any questions, please call Jim Hastreiter at (503) 552-2760.

Sincerely,



Timothy Konnert, Chief
West Branch
Division of Hydropower Licensing

Enclosures: Appendix A-Deficiency
Appendix B-Additional Information

Appendix A

DEFICIENCY

Exhibit G

1. Per section 4.41 of the Commission regulations, please provide the project boundary data in a geo-referenced electronic format.

Appendix B

ADDITIONAL INFORMATION

Aquatic Resources

1. The Marine Mammal Protection Act (MMPA) prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters and the high seas. Take authorization is granted by the National Marine Fisheries Service (NMFS) through either a letter of authorization or conditions contained in an incidental harassment authorization. In 1986, Congress amended both the MMPA, under the incidental take program, and the Endangered Species Act (ESA), to authorize incidental takings of depleted, endangered, or threatened marine mammals, provided the “taking” was small in number and had a negligible impact on marine mammals. With this relationship between the MMPA and ESA, NMFS cannot complete section 7 consultation with the Commission and issue an Incidental Take Permit for listed marine mammals until an Incidental Harassment Authorization has been issued.

Based on the analysis in the draft APEA and draft biological assessment, the project may adversely affect and also subject marine mammals to harassment. Section 1.3.8, *Marine Mammal Protection Act*, of the draft APEA states that Oregon State University (OSU) expects to apply for a marine mammal harassment authorization for the project. In the final license application, please provide a schedule for working with NMFS to satisfy the requirements of the MMPA.

Terrestrial Resources

1. In Section 2.2.4, *Proposed Environmental Measures*, of the draft APEA, you propose to develop a revegetation plan and develop measures that would limit the introduction or spread of invasive species. Please provide additional details in the final APEA of proposed measures to revegetate disturbed areas and proposed measures to minimize the spread of invasive plant species, including use of herbicides.
2. In Section 2.2.4 of the draft APEA, you propose measures to protect the western pond turtle; however, this species is not discussed in Section 3.3.4, *Terrestrial Resources*, of the APEA. Please revise this section to include a discussion of potential effects to the western pond turtle.
3. In Section 2.2.4 of the draft APEA, you propose to conduct surveys for the seaside hoary elfin, a rare species of butterfly, in the event effects to elfin habitat are unavoidable. This would include properties outside of Driftwood Beach State

Recreation Site but within the construction footprint to determine the extent of occupied habitat and associated mitigation. Please provide additional details in the final APEA on survey methods and potential mitigation measures for the elfin.

4. In section 3.3.4.2, *Environmental Impacts Related to Terrestrial Resources*, of the APEA, you do not quantify the amount of different habitat types that would be affected by the project. In the final APEA, please include a table that outlines the amount of each habitat type that would be affected by each project component, including whether effects would be permanent or temporary.

Recreational Resources

1. Section 3.3.6.1, *Recreation, Ocean Use, and Land Use, Affected Environment*, of the draft APEA states that according to Oregon Parks and Recreation Department (OPRD), a portion of the Driftwood Beach State Recreation Site is subject to the requirements of 6(f)(3) of the Land and Water Conservation Fund Act. Please provide a description of this regulation in the final APEA.
2. Section 3.3.6.2, *Environmental Impacts Related to Recreation, Ocean Use, and Land Use*, of the draft APEA describes a plan to develop an interpretive display describing the PMEC-SETS Project, with the intention of installing it in the Driftwood Beach State Recreation Site parking lot. Please provide additional information in the final APEA about how the interpretive display would be developed, including; what coordination would occur with OPRD regarding the content of the interpretive material; what type of structure, or sign, would be used to display the interpretive material; and, where it would be installed within the parking lot area.
3. Section 3.3.6.2 of the draft APEA states that during construction of the terrestrial components of the project (i.e. HDD boring, installation of the underground cable, and construction of the “beach” manholes), access at the Driftwood Beach State Recreation Site would be significantly restricted, preventing access to much, if not all of the parking area. In section 2.2.4 OSU proposes to arrange construction work areas and maintain public beach access during construction, to the extent practicable, and, as feasible, locate construction staging and laydown areas outside of the recreation site to limit loss of parking space.

In the final APEA, please describe how construction activities would be planned and managed to mitigate impacts to public access and use of the Driftwood Beach State Recreation Site, including: (1) the proposed starting and end dates for construction activities within the recreation site; (2) any anticipated timing of partial, or complete, closures of the recreation site, including which portions of the site would be closed, and for how long; (3) how construction activities would be

coordinated with OPRD; (4) what safety measures, aside from using construction fencing, would be enacted to protect recreational users visiting the site; (5) how public access would be maintained throughout the duration of construction activities at the site; and (6) how the site will be restored to its original condition, aside from the newly installed manhole facilities, following the completion of construction activities.

Cultural Resources

1. In section 3.3.7, *Cultural Resources*, of the draft APEA, you state that OSU plans to conduct more focused and detailed geophysical and geotechnical surveys of the area of potential effects (APE) associated with the proposed test site and subsea cable routes for the proposed project, and these surveys are planned to be done in June and July 2018. You also state that a pedestrian survey of the terrestrial component of the proposed project's APE had been conducted in September 2017, and that the related survey report was submitted to the involved Indian tribes and agencies in February 2018 for comment, and that you plan to send a revised report (depending on comments from the tribes and agencies) to the Oregon SHPO for their review and comment. In all, you anticipate from the studies that the proposed project would not have an effect on historic properties.

So we can have adequate information to assess the potential effects of your proposed project on historic properties within your defined APE, please provide all of the requisite reports (for both the marine and terrestrial aspects of your APE) in your final license application, along with all comments you have received on them, including how you adopted all specific comments in the revised reports, or provide reasons why you did not adopt a particular comment. Contingent upon the findings in the reports, and your stated anticipations that the proposed project would not have an effect on historic properties, seek written concurrence from the Oregon SHPO on this finding with a statement that they concur that the proposed project would not have an effect on historic properties. Please provide written concurrence from the Oregon SHPO in your final license application, as well.

Exhibit A

1. Figures A-8 and A-9 show the depth of water to be 260 feet. However, in the text of Exhibit A (project description – page A-1) the maximum depth is mentioned to be 78 meters = 255ft. In Exhibit F drawing also the maximum depth is shown as 255ft. Please correct this inconsistency in the final license application.