

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND THE
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED BY A
LICENSE ISSUING TO
TACOMA POWER
FOR THE CONTINUED OPERATION OF THE
COWLITZ RIVER HYDROELECTRIC POWER PROJECT
IN LEWIS COUNTY, WASHINGTON
(FERC No. 2016)**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue a new license to Tacoma Power (hereinafter, "Licensee") to continue operating the Cowlitz River Hydroelectric Power Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. Sections 791(a) through 825(r) *as amended*; and

WHEREAS, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion on the National Register of Historic Places (hereinafter, "Historic Properties"); and

WHEREAS, the attached *Cultural Resources Management Plan for Tacoma Power's Cowlitz River Hydroelectric Project (FERC No. 2016)*, dated February 2001 (hereinafter, "CRMP") provides a description of the Project, area of potential effects, historic properties identified as of the date of this Programmatic Agreement, anticipated effects, and the Licensee's proposed measures to protect Historic Properties; and

WHEREAS, the USDA Forest Service, Pacific Northwest Region, Gifford Pinchot National Forest (hereinafter, "GPNF") manages lands within the Project, and has responsibilities for the issuance of permits under the Archeological Resources Protection Act (16 U.S.C. 470aa to 470ll; hereinafter, "ARPA") to the Licensee for archeological excavation on Forest Service lands; and

WHEREAS, the Commission has consulted with the Advisory Council on Historic Preservation (hereinafter, "Council"), and the Washington State Historic Preservation Officer (hereinafter, "SHPO") pursuant to 36 C.F.R. Section 800.14(b) of the Council's regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter, "Section 106"); and

WHEREAS, the Licensee has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, GPNF has agreed to participate in the Section 106 consultation regarding the Project under the term of this Programmatic Agreement and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the Project may affect lands important to the Cowlitz Indian Tribe and Yakama Nation (hereinafter, "the Tribes") and the Tribes have participated in the consultation and have been invited to concur in this Programmatic Agreement; and

WHEREAS, the Commission will require the Licensee to implement the provisions of this Programmatic Agreement as a condition of issuing the new license for the Project;

NOW THEREFORE, the Commission, the Council, and the SHPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

S T I P U L A T I O N S

The Commission will ensure that, upon a license issuing for this Project, the Licensee implements the following stipulations. All stipulations that apply to the Licensee will similarly apply to any and all of the Licensee's successors. Compliance with any of the following stipulations does not relieve the Licensee of any other obligations it has under the Federal Power Act, the Commission's regulations, or its license.

I. CULTURAL RESOURCES MANAGEMENT PLAN

- A. Upon license issuing for this Project, the Licensee will implement the CRMP.¹
- B. The Licensee will on every anniversary of the license issuing, file a report with the Commission, the SHPO, GPNF, the Tribes of activities conducted under the implemented CRMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

II. DISPUTE RESOLUTION

- A. If at any time during implementation of this Programmatic Agreement and the resulting CRMP, the SHPO, GPNF, the Tribes, the Licensee, or the Council objects to any action or any failure to act pursuant to this Programmatic Agreement or the CRMP, they may file written objections with the Commission.
 - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection.
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:
 - 1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the Commission that it will comment pursuant to 36 C.F.R. Section 800.7(c)(1) through (c)(3) and Section 110(a)(1) of National Historic Preservation Act, and proceed to comment.

¹ All consulting parties need to respond within 30 days of receipt of a request for review of a finding or determination involving the CRMP.

- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

III. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. The Commission, the SHPO, GPNF, the Tribes, the Licensee, or the Council may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. Section 800.14(b) to consider such amendment.
- B. The Commission, the SHPO, or the Council may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, the SHPO and the Council consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In addition, the Commission will seek comments from the GPNF, the Tribes, and the Licensee on the termination during the 30-day notice period. In the event of termination, the Commission will comply with 36 C.F.R. Sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement and subsequent implementation is evidence that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues a license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.

FEDERAL ENERGY REGULATORY COMMISSION

By: _____ Date: _____

Richard Hoffmann, Acting Director
Division of Environmental and Engineering Review

WASHINGTON STATE HISTORIC PRESERVATION OFFICER

By: _____ Date:
Allyson Brooks, Ph.D.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

John M. Fowler, Executive Director

CONCUR: TACOMA POWER

By: _____ Date: _____
Mr. Patrick D. McCarty, Generation Manager

**CONCUR: USDA FOREST SERVICE, PACIFIC NORTHWEST REGION,
GIFFORD PINCHOT NATIONAL FOREST**

By: _____ Date: _____

Lynn Burditt, Acting Forest Supervisor

CONCUR: COWLITZ INDIAN TRIBE

By: _____ Date: _____
John Barnett, Chairman

CONCUR: YAKAMA NATION

By: _____ Date: _____
Jerry Meninick, Chair