

**MULTIPLE-PROJECT DRAFT COMMUNICATIONS PROTOCOL**

*For the*

**Cascade Creek Hydroelectric Project, FERC No. 12495-000**

**Ruth Lake Hydroelectric Project, FERC No. 12619-000**

**Scenery Creek Hydroelectric Project, FERC No. 12621-000**

*Collectively as*

**Thomas Bay Energy Development Projects**

*Prepared by*

**Cascade Creek LLC, Bellingham, WA**

**July, 2007**

## INTRODUCTION

Cascade Creek LLC (“CCLLC”) holds Preliminary Permits (“Permits”) from the Federal Energy Regulatory Commission (“FERC”, “Commission”) for the proposed Thomas Bay Energy Development (“TBED”) consisting of the Cascade Creek, Ruth Lake, and Scenery Creek hydroelectric projects, FERC No. 12495-000; 12619-000; and 12621-000 respectively. The Permits preserve the CCLLC rights to conduct feasibility studies for the projects.

The Permits included CCLLC’s requirement to utilize the Commission’s Integrated Licensing Process (ILP) as described in 18 CFR, Chapter 1, Section 5.5 of the Federal Regulations. The ILP is a recently adopted licensing process intended to streamline the hydroelectric project licensing process through more intensive interactions in the early stages of the Preliminary Permit period.

The Permits also state that an Applicant may utilize either of two other licensing methods, the Traditional Licensing Processes (TLP) or the Alternative Licensing Process (ALP) on approval by the Commission.

For the Project, CCLLC has decided to utilize the ALP. An applicant’s request for use of ALP must include documentation of approval by Project Stakeholders, of both the licensing process and a Communications Protocol (CP) governing communications during the pre-filing period.

## LICENSING PROCESS DESCRIPTIONS

### ILP

The efficiencies expected to be achieved through the ILP are founded in three fundamental principles:

- Early issue identification and resolution of studies needed to fill information gaps, avoiding studies post-filing;
- Integration of other stakeholder permitting process needs; and
- Established time frames to complete process steps for all stakeholders, including the Commission.

### ALP

As part of the alternative licensing process, an applicant can:

- Tailor the pre-filing consultation process to the circumstances of each case;
- Combine into a single process the pre-filing consultation process and environmental review processes under the National Environmental Policy Act and other statutes; and

- Allow for preparation of a preliminary draft environmental assessment by an applicant or an environmental impact statement by a contractor chosen by the Commission and funded by the applicant.

Under the ALP, CCLLC would, with FERC direction and approval, conduct **NEPA Scoping** (the public participation process to solicit comments on environmental issues) and prepare and submit a **Preliminary Draft Environmental Assessment (PDEA)** with the license application. The **Final EA**, which will serve as the basis for conditions of the new license, will be prepared by the FERC after their independent review of the PDEA and project record.

### **PARTICIPATING in the LICENSING PROCESS**

Under the ALP, the licensing process is open to the general public and their participation is encouraged. A Participant List will be compiled by CCLLC and expanded as new Participants request inclusion in the ALP.

The ALP affords Participants the opportunity to interact with the licensing process at several distinct points, including: 1) public meetings; 2) coordinated meetings 3) document review and comment; and 4) access to general information regarding process, schedule, and status. CCLLC will use several means to assure access to licensing material, as described in the following sections.

### **PUBLIC REFERENCE FILES**

There will be two public reference files, one in Petersburg and the other at the Commission offices in Washington D.C. The reference files will be maintained on a monthly basis and will include, but not be limited to: semi-annual progress reports (described below), study plans and reports, preliminary data files, meeting announcements, agendas and summaries, draft and final technical reports, draft and final EA's and license applications, written correspondence and telephone discussion notes. The addresses of the Public Reference Files are:

Petersburg Public Library  
12 Nordic Dr.  
Petersburg, AK 99833;

and:

Federal Energy Regulatory Commission  
Public Reference Room, Room 2-A  
Attn: Secretary  
888 First Street, N.E.  
Washington, D.C. 20426

All materials in the reference files will be available for review and copying by request. All communications added to the Public Reference File will be available to the public consistent with the public records procedures set forth in the Freedom of Information Act. Most materials will also be available on the FERC website ([www.ferc.gov](http://www.ferc.gov)). Individual project information is available on the FERC website at the **elibrary** link by inputting the Project number (P-12495; P-12619; or P-12621).

### **THE TBED LICENSING WEBSITE**

CCLLC will develop and maintain a TBED Licensing Website at which most Project material will be made available. There will be information pertaining to the Project in general and specifically to Cascade Creek, Ruth Lake, and Scenery Creek. The TBED Licensing Website will contain:

- Individual Project Descriptions for Cascade Creek, Ruth Lake, and Scenery Creek;
- Description of the licensing Process and ALP;
- Licensing Schedule;
- Notices of Public and Coordinated Meetings;
- Notices of Availability of Documents for Participant Review;
- Semi-Annual Progress Reports;
- Monthly Status Updates;
- Current Participant List;
- Tracking File (record of all licensing transactions); and
- Other features, as deemed necessary.

### **NEED for TIMELY NOTIFICATION and REVIEW**

For this process to succeed, it is important that the interaction opportunities are announced to the Participants, and that the Participants provide timely comment and information at each opportunity. It is also important that Participants have sufficient access to general information. In the following, we describe the protocols to address these needs.

### **MEETINGS and SITE VISITS**

Two types of public meetings will be held during the pre-filing period, an Initial Stage Consultation Meeting and a Scoping Meeting. Both meetings will be held in both Juneau and Petersburg, on successive days to the extent possible. The initial consultation

meeting will be held no less than 30 and no more than 60 days following distribution of the Pre-Application Document (PAD). The Scoping meeting will be held during fall or winter, 2007-2008, after initial field studies have been evaluated. A site visit to Thomas Bay will be held at a time selected to reasonably assure access to the Project area.

Notice of both meeting and site visit will be placed in the Petersburg Pilot, Wrangell Sentinel, and Juneau Empire newspapers more than 15 days prior to the events. CCLLC will prepare draft summaries of the Initial Stage Consultation and Scoping meetings and the site visit, and circulate them among attendees for review and comment. At these meetings, a statement will be made that attendees will have 30 days to comment on the meeting transactions and any associated documents distributed by CCLLC.

Notice of both meetings and the site visit will be posted on the TBED Licensing Website. The Commission will also publish notice of the Scoping meeting and site visit in the Federal Register. All notices will be posted at least 30 calendar days in advance of the meeting date. CCLLC will also serve notification of the Scoping meeting and site visit via e-mail to all those on the Project's Participant List. The Scoping meeting will be professionally transcribed and all statements (oral and written) will become part of the public record for the TBED licensing.

## **COORDINATED MEETINGS**

Meetings between and among licensing Participants may occur on an "as needed" basis. In such meetings, a FERC representative will normally be invited to participate by teleconference or onsite. Draft agendas for such meetings will be distributed at least 14 days prior to the meetings. If a CCLLC representative is present at the meeting, CCLLC will prepare a meeting summary. If CCLLC is not present at the meeting, the person who requested the meeting will prepare the meeting summary.

## **MEETING SUMMARIES**

Draft Meeting Summaries for all public and coordinated meetings will be circulated to all meeting Participants for review and comment within 15 days after the meeting. Comments will be incorporated into a Final Meeting Summary, with the goal of agreement among all Participants on its content. Deadlines for preparation of drafts, returning comments, and submittal of a final summary will be agreed upon by Participants at each meeting. Final Meeting Summaries should be mailed to CCLLC at the contact address on page 8, for inclusion in CCLLC's Tracking File and Licensing Website. All Draft and Final Meeting Summaries will be available on the TBED Licensing Website and in hard copy by request.

## DOCUMENT AVAILABILITY

### MAJOR DOCUMENTS

Throughout the licensing process, Participants will be afforded opportunity to review and comment on documents prepared in the course of the licensing process. While it is not possible to envision an exact list of documents and their times of issuance, CCLLC expects to prepare and distribute the major documents shown in Table 1 prior to the application for license.

Most licensing-related written material will be available in electronic format and will be electronically distributed directly to Participants via email with attachment. CCLLC will follow certain e-mail transmittals with a phone message check to assure the message and documents were received and in a readable format.

Documents will be in MS Word or Adobe pdf format. Much of the same material will be available through the TBED Licensing Website. In all cases, however, Participants may request printed copies of major documents. Printed copies of Scoping Documents, the Draft Application, Preliminary Draft EA or EIS, FERC Draft EA, and FERC Order Issuing License will also be available at the public library in Petersburg and the state library in Juneau.

Most major documents will be available in either text or Adobe pdf on the FERC website. To access documents on this website go to [www.ferc.us.gov](http://www.ferc.us.gov) and then to “elibrary” on the home page. This will open a search page offering several search options.

The review period for major documents will be no more than 30 days, unless longer periods are required by FERC regulations, or if individual agencies formally request more review time.

**Table 1.** Major documents to be made available for review during TBED licensing.

<b>Document Name</b>	<b>Expected Date of Issue</b>	<b>Description</b>
<b>Pre Application Document (PAD)</b>	August, 2007	Document with Project description, licensing schedule, and preliminary resource issues
<b>Study Plans</b>	Fall, 2007	Describe detailed objectives, methods, and required reporting for various environmental field and office studies
<b>Scoping Document I (SD1)</b>	Fall, 2007	A document describing the Project, licensing process, and environmental and economic issues related to

		licensing
<b>Study Reports</b>	2008-2009	Present results of the environmental studies, usually on an annual basis
<b>Draft Application for License</b>	Spring, 2009	Documents describing various design and operation aspects of the project, as proposed for licensing
<b>Preliminary Draft EA</b>	Spring, 2009	Accompanies Draft Application, describes existing environment, licensing impacts, and mitigation proposals
<b>Final License Application</b>	Fall-Winter 2009	Incorporates all agency comments and presents Applicant's Preferred Alternative and proposed PM&E measures
<b>FERC Draft EA</b>	2010	FERC-prepared EA noting issues, impacts, mitigation, and recommendations
<b>FERC Order Issuing License</b>	2010-2011	Contains FERC's Final EA and Licensing Order as well as License Articles and other Conditions

## **MINOR DOCUMENTS and CORRESPONDENCE**

Throughout the licensing process, CCLLC will communicate frequently with Participants, individually and collectively. These communications may include written material such as meeting notices and summaries or other small documents relevant to the communications. Minor documents (with exception of Status Reports) will become part of the public record after review, editing, and approval by participating parties. Transfer of minor documents will be primarily in the form of e-mail, often with attached files, and via the TBED Licensing Website.

## **COMMUNICATIONS PROTOCOLS**

In this section, we describe conditions governing communications among licensing Participants. The Protocols are intended to assure that interactions are appropriate, effective and properly documented.

## **ASSIGNED CONTACTS**

Each participating agency or organization will designate an individual to serve as the point of contact for CCLLC throughout the licensing process. These individuals will distribute documents, announcements, and other written and verbal communications to others in the agency or organization they represent. CCLLC will honor requests to copy other agency or organization individuals on communications, but the assigned contact will be responsible for response to distributed documents, needs for agency or organization review, or other queries from CCLLC, other participants, or FERC.

Immediately after initiation of this CP, each agency or organization will designate, in written communication to CCLLC, the name and contact information of the assigned contact. If an agency or organization wishes to change assigned contact, they should distribute in writing to all parties the name and contact information of the new contact.

## **WRITTEN COMMUNICATIONS**

All written communications that need to be part of the public record, including comment letters, progress reports, fax communications, meeting summaries, and teleconference summaries, or which any party intends to become part of the formal record, should be mailed or emailed to:

Steven C. Marmon  
Cascade Creek, LLC,  
3633 Alderwood Ave.,  
Bellingham, WA 98225  
(360) 738-9999 ph. Ext. 122  
(360) 733-3056 fax  
[smarmon@tollhouseenergy.com](mailto:smarmon@tollhouseenergy.com)

All written communications must have the following clearly displayed on the first page, preferably in the “Subject” line of the correspondence:

### **Thomas Bay Energy Developmnet (FERC No. 12495; 12619; 12621)**

Written communications must display deadlines for comments or other actions (when applicable) and should reference the corresponding activity of the licensing process associated with the written communication (for example, “Comments on Scoping Document I”, “Summary of Study Planning Meeting”, etc.) in the “Subject” line of the correspondence. Communications must indicate where to submit responses, when applicable. Copies of all written communications will be placed in the Public Reference File. A distribution mailing list will be sent with each formal correspondence or document that shows all recipients who were sent a copy.

The Commission will from time to time advance the number following the Project number to indicate a different licensing action phase (for example, FERC No. 12495-001, 12495-002, etc.) Participants should check Commission and CCLLC correspondence

closely to assure that the proper project numbers are identified when referencing a particular document.

## **TELECONFERENCE COMMUNICATIONS**

Periodic teleconference calls among licensing Participants may occur on an “as-needed basis”. CCLLC will prepare written summaries of teleconference calls between an Agency and CCLLC. Participants will be noticed and given the opportunity to participate in any communications CCLLC makes with FERC on substantive matters concerning the licensing. Documentation of teleconference calls between CCLLC and the Commission will be included in the Public Reference File.

## **INTER/INTRA RESOURCE AGENCY STAFF COMMUNICATIONS**

Written communications, meetings, telephone conversations, or other types of communications within or between State or Federal resource agency staff concerning the TBED licensing are not subject to the scheduling, notification, and documentation requirements of previous sections of this CP. It is understood that such communications will not be part of the licensing record unless they are submitted to the Commission by a participating agency. However, in the spirit of openness reflected in this CP, CCLLC encourages agencies to submit records of such meetings and communications to the Contact Address on page 8 as often as possible during the licensing.

## **COMMUNICATION WITH COMMISSION STAFF**

The Commission recently revised its ex-parte rules (88 FERC para. 61,225) and determined that the rule prohibiting off-the-record communications does not apply to interactions during the ALP. This is because all actions under ALP occur before a license application is filed, prior to the Noticed “licensing procedure” at the Commission. However, in this CP’s spirit of open interaction, oral communications by any participant with FERC staff should be summarized in a written memorandum prepared by a Participant agreed upon among those involved in the communication, and distributed to the Project Participant list for review.

## **ORAL COMMUNICATIONS AND E-MAILS**

Oral communications (i.e. telephone conversations) between CCLLC and any Participant will be documented in writing (see “Contact Logs”, below) if communications regard substantive aspects of the project licensing. Similarly, e-mails between CCLLC and any Participant on substantive Project issues will also be documented. All written communications distributed by parties to the CP shall enclose or attach a distribution list for that communication that identifies all recipients of that communication. The cc list on an e-mail message can serve as the distribution list.

## **DISPUTE RESOLUTION**

Dispute prevention is preferable to dispute resolution. However, when disputes arise, it is intended that efforts to resolve a dispute focus on alternative dispute resolution methods. These may include the use of a facilitator, as described in the following:

### **Compromise and Good Faith Efforts**

In the interests of reaching agreement, Participants are expected to make compromises in some areas. This means that Participants will make good faith efforts to address the concerns of others so that most Participants can agree or live with the interim outcomes and do not object to the terms and conditions. It is recognized that each Participant may not find the resulting decision or settlement to be optimal in relation to their preferred outcome, but that the overall outcome will be beneficial to their interests as well as those of the other Participants.

### **Informal Efforts to Resolve Disputes**

If disputes arise and are not resolved in the process, a mutually agreed upon facilitator may be assigned. The facilitator and stakeholders should make every reasonable effort to resolve disputes amongst Participants including: facilitator's use of alternative dispute resolution techniques, e.g., offline mediation by the facilitator; determining whether additional study or analysis could be undertaken to provide new information necessary to resolve the dispute; referring a technical matter to a third party expert or for peer review; identifying potential trade-offs to satisfy one of the disputing Participants; and, forming a workgroup to focus specifically on the matter in question.

Participants that are in substantive dispute will schedule a separate meeting/conference call, open to all interested parties, to discuss and resolve their differences. Unless the parties agree that it is unnecessary, a facilitator must be present at a meeting as an independent note taker.

### **STATEMENTS to the MEDIA**

Communications by the participants to the media will generally not be maintained in the Public Reference File. No person or entity involved in the alternative licensing process is authorized to make a statement on behalf of any other person or entity to any media person or entity with regard to the process or any substantive issue affecting the relicensing application. When a representative for a participant speaks to the media about the TBED process, s/he should preface comments with: "I speak only for \_\_\_\_\_ and not for any other participant in the TBED licensing process."

### **DURATION OF COMMUNICATIONS PROTOCOL CONDITIONS**

This CP shall become effective upon the Commission's approval of CCLLC's request to use the Alternative Licensing Process. Until then, CCLLC and the participants shall act in good faith to recognize the likely future acceptance of this Protocol and its obligations. This Protocol will remain in effect until the Commission notifies CCLLC the Preliminary

Draft Environmental Review Document and Final License application are accepted for filing with the Commission or until termination of the ALP. Participants may elect by consensus, including unanimous consent of the Resource Parties, to extend the duration of this Protocol until license order issuance.

### **RESERVATION of RIGHTS**

This Protocol is made (and filed with the Commission), and the collaborative process is undertaken, without prejudice as to any rights or interests of any participant and with a full reservation of rights by and on behalf of any and all participants. No participant shall be deemed to have waived any legal right or evidentiary claim or privilege by participation, statement or act in this process by the participant or its representatives. Nothing in this Protocol shall be construed to limit any governmental agency from complying with its obligations under applicable laws or from considering public comments received in any environmental review or other regulatory process. This process shall not be interpreted to in any manner predispose or predetermine the outcome of any permit or environmental review process.

### **CONTACT LOGS**

Contact log sheets will be utilized to document substantive oral communications among the Participants, CCLLC, or the Commission. Contact log sheets will include: individual(s) involved; title(s); date of communication; subject of communication; issues discussed; and action(s) to be taken.

### **REVISIONS of the CP**

Upon written approval by CCLLC and the signatories, this CP may be revised as deemed appropriate throughout the licensing period. No changes will be made to the CP without notification of all Participants. All proposed procedural changes will be distributed in writing to all Participants for review and comment. If comments represent a consensus of opinion on the proposed change(s), the Protocol will be modified, and the revised version distributed to the Participants list. In case of a dispute over proposed changes, CCLLC will convene a meeting or teleconference among affected participants.

## **SEMI-ANNUAL PROGRESS REPORTS**

Every six (6) months CCLLC will file with the Commission a progress report for each individual project, Cascade Creek, Ruth Lake, and Scenery Creek, that will summarize each project's status at the end of the previous 6-month reporting period. Each report will include the following for the forgoing 6-month period:

- An updated log of oral and written communications;
- Descriptions of all major action taken on the project;
- Copies of all comment letters and other written correspondence, including those with the Commission staff;
- Copies of all meeting summaries and teleconferences call records; including those with Commission staff;
- Schedule for the next 6-month licensing period, including action items; and
- Other information pertinent to the licensing.

Each 6-month progress report will be placed in the Project Public Reference Files and on the TBED Licensing Website. Each Participant will receive a copy of the cover letter submitting the progress report to the Commission along with a log of all communications filed for that period. Any Participant may request a copy of any item on the log from CCLLC.

**COMMUNICATIONS PROTOCOL APPROVAL**

**THOMAS BAY ENERGY DEVELOPMENT PROJECTS**

**FERC No. 12495-000; 12619-000; 12621-000**

I have read and agree to follow this Communications Protocol proposed by CCLLC to guide communications and information exchange between the Participants in the ALP for the TBED.

**SIGNATURE**

**AGENCY/ORGANIZATION**

**DATE**

\_\_\_\_\_

I accept the conditions of this communication protocol

I do not accept the conditions of this communication protocol

Reasons, if any: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Please mail to:

Office of the Secretary,  
Federal Energy Regulatory Commission,  
888 First Street, NE.,  
Washington, DC 20426;

and

Steve Marmon  
Cascade Creek, LLC,  
3633 Alderwood Ave.,  
Bellingham, WA 98225  
(360) 738-9999 ph. Ext. 122  
(360) 733-3056 fax  
[smarmon@tollhouseenergy.com](mailto:smarmon@tollhouseenergy.com)