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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE MONTANA PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF NorthWestern)	
Energy's Application for Approval to)	
Purchase and Operate PPL Montana's)	REGULATORY DIVISION
Hydroelectric Facilities, for Approval of)	
Inclusion of Generation Asset and Cost of)	DOCKET NO. D2013.12.85
Service in Electricity Supply Rates, for)	
Approval of Issuance of Securities to)	
Complete the Purchase, and for Related)	
Relief)	

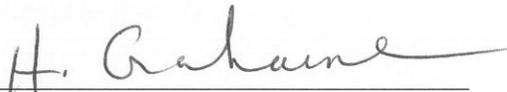
**Informational Filing of NorthWestern Energy Regarding
1985 License Issued for the Kerr Hydroelectric Project by
the Federal Energy Regulatory Commission**

Please find attached:

- **Attachment A:** The April 16, 1985, order of the presiding FERC administrative law judge (“FERC ALJ”) recommending approval of the settlement between the Montana Power Company, the CSKT, the Flathead, Mission, and Jocko Valley Irrigation Districts (jointly, the “Irrigation Districts”), the Montana Consumer Counsel, and the Secretary of the Interior (hereafter the “ALJ Order”).¹
- **Attachment B:** FERC’s July 17, 1985, order approving the settlement and issuing the license for the Kerr Hydroelectric Project (hereafter the “FERC Order”).²

Respectfully submitted this 17th day of July 2014.

NORTHWESTERN ENERGY

By: 

Al Brogan
Sarah Norcott
Heather Grahame

Attorneys for NorthWestern Energy

¹ *The Montana Power Co.*, 31 FERC ¶ 63,015 (1985).

² *The Montana Power Co.*, 32 FERC ¶ 61,070 (1985).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Information Filing of NorthWestern Energy Regarding 1985 License Issued for the Kerr Hydroelectric Project by the Federal Energy Regulatory Commission will be hand delivered to the Montana Public Service Commission (PSC) and the Montana Consumer Counsel (MCC) on this day and e-filed electronically on the PSC website. It will be mailed to the most recent service list in this Docket and will also be emailed to the Counsel of Record.

Date: July 17, 2014



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Docket No D2013.12.85
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ATTACHMENT A

1 FERC - 75 FERC, 31 FERC ¶63,015, The Montana Power Company, Project No. 5-004, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 2776-000, Federal Energy Regulatory Commission, (Apr. 16, 1985)

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Energy & Natural Resources > FERC Opinions, Orders & Decisions (1 FERC - present) > 1 FERC - 75 FERC > Volume 31 (April-June 1985) > ALJ Decisions and Reports > 31 FERC ¶63,015, The Montana Power Company, Project No. 5-004, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 2776-000, Federal Energy Regulatory Commission, (Apr. 16, 1985)

The Montana Power Company, Project No. 5-004, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 2776-000

[65,063]

[¶63,015]

The Montana Power Company, Project No. 5-004

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 2776-000

Certification of Uncontested Offer of Settlement

(Issued April 16, 1985)

Bruce L. Birchman, Presiding Administrative Law Judge.

On March 29, 1985, the Montana Power Company (MPC), the Confederated Salish and Kootenai Tribes of the Flathead Reservation (Tribes), the Flathead Mission, and Jocko Valley Irrigation Districts (Districts), the Montana Consumer Counsel, and the Secretary of the Interior of the United States Department of the Interior (Secretary) filed a Joint Offer of Settlement in these consolidated competitive relicensing proceedings. Pursuant to my ruling, expedited initial comments were due by April 12, 1985, 10 business days following the filing of the settlement. The only comment which I have received is that of Commission Staff filed on April 12, 1985, which supports the settlement as one that is fair and reasonable and in the public interest. Staff states that the settlement resolves many complex legal and factual issues, requests that the settlement be certified to the Commission for approval, and urges prompt review of the settlement as each day that the new annual charge is not imposed equates to a loss of \$17,534 to the Tribes.

By order dated July 20, 1983, [24 FERC ¶61,088](#), the Commission directed a hearing to determine whether the plans of one applicant are better adapted to conserve and utilize in the public interest the water resources of the region. A prehearing conference was convened on September 7, 1983, which resulted in the adoption of a trial schedule. My order of April 10, 1984, adopted a stipulation of issues which is set forth in the appendix to this certification. My order dated May 16, 1984, reflected the agreement of the Bonneville Power Administration (BPA) to participate and present testimony and evidence of witnesses for the court as concerns certain stipulated issues.

[65,064]

Under the trial schedule, I held a public non-evidentiary session at Kalispell, Montana on July 9, 1984, an afternoon public session at Pablo, Montana on the Flathead Reservation and an evening public session at Missoula, Montana on July 10, 1984. Transcripts of the record of these public sessions and the views and comments of more than a thousand citizens of the State of Montana, the state legislature, civic organizations, and businesses and corporations having substantial and sincere concerns in these proceedings comprise the

multiple volume record of the public sessions. A site visit to and tour of the project works was conducted by this Presiding Judge on July 9, 1984, during which evidence was taken (Vol. 5, Tr. 480-507). Three days of trial commenced at Helena, Montana, on July 11, 1984, and was followed by three days of trial commencing at Missoula, Montana, on July 16, 1984 (Vols. 6-11, Tr. 939-1383).

In light of the Commission action on July 15, 1984, and subsequent order dated July 25, 1984, [28 FERC ¶61,141](#), which denied, without prejudice, the Tribes' application filed on April 16, 1984, for a wheeling order, and also denied consolidation of that application with these proceedings, the trial on July 18, 1984, was recessed briefly to allow the parties to consider certain suggestions of the undersigned, including settlement of the case. Wheeling of project power by MPC and BPA was central to the Tribes' evidentiary case. The Tribes' wheeling application was filed at my direction to reflect this fact. Testimony and evidence concerning the feasibility, propriety, and impact of wheeling or other power marketing by BPA was filed by BPA under the trial schedule. Following the recess, the parties agreed to the convening of a prehearing conference on August 5, 1984, at Washington, D.C. to consider the further course of these proceedings (Vol. 11, Tr. 1271-1288). Trial in Montana resumed and concluded on July 18, 1984.

By my order of August 7, 1984, [28 FERC ¶63,026](#), I denied the Tribes' motion for partial summary disposition on the stipulated issue of whether the Flathead Irrigation Project (which is operated by the United States Department of the Interior) had a continuing right to receive low cost or so-called bargain power or other appropriate compensation under a new license. (Article 26 of the original license makes provision for such a sale.) A prehearing conference was held on August 28, 1984, at which time, *inter alia*, the parties advised me that settlement discussions were held subsequent to trial in Montana, and that at this time resumption of the trial at Washington, D.C. was appropriate.

My Order to Show Cause Why the Tribes' Application Should Not Be Summarily Denied and Issue Certified to the Commission, dated August 30, 1984, [28 FERC ¶63,065](#), directed oral argument on September 5, 1984, to address the captioned matter. Oral argument was held on September 6, 1984. Upon conclusion, I agreed to defer a ruling in order to facilitate and encourage settlement of the case, particularly in light of the urging of the Tribes' representative, Ms. Teresa Wall, that the Tribes were very committed to the notion of settlement, and that the Tribal Council was serious in this endeavor and desired the opportunity to engage in settlement discussions (Tr. 1532). I suspended the trial schedule and established settlement procedures. Seven prehearing conferences concerning settlement were held between September 25, 1984, and March 13, 1985 (Vols. 15-21, Tr. 1551-1713), and, as noted, this joint offer of settlement was filed on March 29, 1985.

The jointly filed offer of settlement includes the assent as well as necessary statutory approval of the Secretary of the Interior. The settlement is uncontested.

The principal terms of the settlement are delineated at pages 21-29, and are restated in the draft Order Approving Settlement that comprises Appendix 2 to the joint offer of settlement. The Joint License terms and conditions are set forth in Attachment A to the offer of settlement.

Necessary and appropriate provision is made in Article 44 for an interim minimum outflow of 3,200 cfs pending the completion by October 1, 1989, of ongoing environmental studies for fishery and wildlife mitigation and management plans which are required to be filed by October 1, 1989 and evaluated by FERC under Articles 45, 46, and 47, and for the imposition of fish and wildlife protective conditions by the Secretary of the Interior under Articles 45(b) and 46(b) of the joint license.

Article 50 provides for wheeling by MPC of the project's power for the Tribes during the Tribes ownership and operation of the project works. In a related vein, Item "IV. Denial of Wheeling Request," Appendix 1 to the settlement, reflects the Tribes consent to FERC denial of their pending request for rehearing of the Commission's order of July 25, 1984 [[28 FERC ¶61,141](#)] in Docket No. EL84-12-000 .

Article 51 provides for training by MPC of tribal members in the operation and maintenance of the project works commencing in year 25 of the joint license.

[65,065]

Article 39 provides for payment by MPC to the Tribes of an annual charge of \$9 million as adjusted for inflation, and reflects the agreement of the Secretary of the Interior to this annual charge. Item "II. Dismissal of Appeal concerning Annual Charges During Annual-License Period," Appendix 1 to the settlement, in a related respect, requires the Tribes to seek dismissal, with prejudice, of pending litigation concerning the current annual charge under interim annual licenses issued to MPC by FERC on and after May 22, 1980, when MPC's original license expired.

Item "III. Rights of Way Across Indian Lands for Project-Related Facilities," Appendix 1 to the settlement, resolves amicably an issue which arose at the prehearing conference on August 28, 1984. This issue required amendment of the adopted stipulation of issue for trial and modification of the then trial schedule to allow for additional testimony and evidence. (See, e.g., Tr. 1410, 1415-36). Similarly, Attachment B of the settlement, contains the Tribes' consent to the grant by the Secretary to MPC of rights-of-way for the use and occupancy of tribal lands in connection with MPC's operation, use, and maintenance of the project works.

Article 38 of the joint license provides for the establishment of an amortization reserve that is required by section 10(d) of the Federal Power Act.

Article 40(c) reserves for adjudication before FERC upon petition by the Tribes, the Secretary, or the Irrigation Districts no later than the 15th anniversary of the joint license, the so-called bargain power issue, viz., "whether, from the time the Project is conveyed by MPC to the Tribes until the expiration of the Joint License, (i) the Tribes must make any part of the output from the Project available to the United States, for and on behalf of FIP [Flathead Irrigation Project] or the Districts, or if so on what terms or conditions, or (ii) the United States may reserve for itself the exclusive right to sell power within the boundaries of the Reservation." I note that Article 40(a) and (b) makes provision for sale by MPC for and on behalf of the Flathead Irrigation Project or the Districts the sale of so-called bargain power but at a higher rate than under the original license to MPC and the interim annual licenses to MPC.

Paragraph E to the Joint License (Attachment A, p. 11) incorporates the Commission's standard license conditions, with certain exceptions.

The settlement is unique as well as historic. It provides, among other things, for the sharing of a license issued by FERC, with MPC continuing ownership and operation of the project works for the first thirty years, and, upon stipulated and appropriate statutory compensation, for the Tribes to own and operate the project works for the remaining twenty years and subsequent annual terms. Shared ownership and operation reflects the suggestion of the undersigned made early on in these proceedings.

The settlement represents an end to often troubled and bitter relations between MPC and the Tribes upon whose property a substantial portion of the project works lie as concerns the annual charge and readjustment of that annual charge, and more or less ongoing litigation between the Tribes and MPC before the FPC, FERC, and federal courts over the past 30 years. The settlement creates a substantial future role for tribal ownership and operation of an important hydroelectric resource, the training and employment of tribal members in the operation of a vital resource, and the furtherance of tribal independence. It assures needed, adequate, reliable, and low-cost electric service to the citizens of Montana.

I concur in the views of the signatories of the offer of settlement set forth at pps. 29-33 of the settlement, and in the initial comment of FERC Staff that this uncontested settlement is in the public interest. I commend its approval to and by the Commission. I believe that the settlement comports with the Federal Power Act and the National Environmental Policy Act.

I am certifying to the Commission pursuant to Rule 602 of the Commission's Rules of Practice the Joint Offer of Settlement filed on March 29, 1985; a letter dated April 3, 1985, which includes an executed consent to Grant of Right of Way in the form required by Attachment B to the settlement; Staff's initial comment in support of the settlement; the record in this proceeding which consists of Tr. Volumes 1-21, Tr. 1-1713, and Exhibits 1-346, with the exceptions next noted. Exhibit 307 was identified but was not admitted in evidence. Exhibits 148, 149, and 315 were struck by the undersigned. Exhibits 194, 201-203, and 324 were withdrawn by their sponsors. Exhibit 121 is certified under seal in light of my *Order Regarding Confidentiality of Certain Data and Evidence* dated

March 23, 1984. Please note that Exhibits 224A, 245-247A, and 249A supercede their primary numbers. In accordance with Item "IX. Reservations," section 9.4, Appendix 1 to the settlement, I have admitted in evidence the following exhibits upon which cross-examination was waived by the parties for the purpose of consideration of this settlement:

[65,066]

Exhibits 322, 326, 327 (Joint Board representing the Districts), Exhibits 297-306, and 340-343 (BPA); Exhibits 271-296, 344-346 (FERC Staff); and Exhibits 206-219, and 338-339 (Secretary).

I also am certifying three items by Reference, Items A-C by Reference which consist of the applicants' competing applications and a court decision reported at 640 Pac. 2nd 889 (1982). Last, there is certified the following unnumbered volumes of the public sessions: an unnumbered volume styled "Public Correspondence"; an unnumbered volume styled "Public Meeting" at Kalispell, Montana on July 9, 1984, and three unnumbered volumes styled and containing "Petitions and Letters Received at Public Session" at Kalispell, Montana; an unnumbered volume styled "Public Meeting" at Pablo, Montana, on July 10, 1984; an unnumbered volume styled "Petitions and Letters Received at Public Session" at Pablo, Montana; an unnumbered volume styled "Public Meeting" held at Missoula, Montana, on July 10, 1984; and an unnumbered volume styled "Petitions and Letters Received at Public Session" at Missoula, Montana.

As noted at page 28 of the Joint Offer of Settlement, pursuant to Item VIII, Appendix 1 to the settlement, to approve the settlement the Commission must act within approximately four months of the settlement's filing, or by the conclusion of July 1985. Given the circumstance that the settlement is uncontested, there is no need to defer certification pending the expiration of the period for reply comments.

Appendix

Order Confirming and Revising ¹ Adoption of Stipulation of Issues

(April 10, 1984)

This order confirms my adoption at the prehearing conference held on March 29, 1984, of the following stipulation of issues:

A. Issues Concerning Which Application Should be Granted.

1. What economic impact would grant of each proposal have on consumers? ("Merwin" issues)
 - (a) What short-term impact would each have?
 - (b) What long-term impact would each have?
 - (c) Can the Tribes legally sell Kerr output for resale at rates exceeding the cost of production?
2. Which proposal would better serve current or future energy needs?
3. What economic impact would grant of each proposal have on the Tribes?
4. What economic impact would grant of each proposal have on the Flathead Irrigation Project and its water and power users?
5. What economic impact would grant of each proposal have on local taxing jurisdictions?
6. Which proposal would more efficiently use the Kerr Project facilities in terms of:
 - (a) The amount of transmission required?
 - (b) Use with other generation for peaking?
 - (c) Integration with load?
 - (d) Coordination with other parties to the Pacific Northwest Coordination Agreement?
7. (a) What are, or will be, the applicants' respective financial qualifications to carry out their proposals?
(b) What are, or will be, the applicants' respective technical qualifications to carry out their proposals?

8. (a) What is the economic feasibility of:

- (i) upgrading of the three units at Kerr;
- (ii) a fourth unit at Kerr; and
- (iii) new units at the Buffalo Rapids sites?

(b) Which proposal, if either, would better promote further hydroelectric development of the Flathead River with respect to (a)(i), (a)(ii), or (a)(iii)?

9. Which proposal, if either, is better suited to carrying out the intent of the Congress with respect to the Irrigation Project?

10. (a) Will the wheeling needed under the Tribes' proposal be available on:

- (i) Montana Power Company lines?
- (ii) Bonneville Power Administration lines?
- (iii) The Pacific Intertie?

(b) Can and should FERC compel (any such) ² wheeling by MPC ², assuming an appropriate application is filed and consolidated with this proceeding?

(c) Is BPA obligated as a matter of law to perform the necessary wheeling for the Tribes?

11. What legal preferences or veto rights apply?

(a)(i) Do the Tribes have a veto power over grant of the new license under the Federal Power Act or the Indian Reorganization Act?

(ii) Does the Secretary have a veto over grant of the new license under the Federal Power Act?

[65,067]

(b) Does the Secretary or do the Flathead, Mission, and Jocko Valley Irrigation Districts on behalf of Irrigation Project water and power users, have the power under the Act of March 7, 1928, 45 Stat. 200, 212-13 to require satisfactory terms and conditions for the relicensing of the reserved or appropriated water and power rights claimed by or on behalf of the Irrigation Project?

(c)(i) Does the Federal Power Act confer a preference upon MPC, as the incumbent, as a matter of law?

(ii) Should the Commission, in any event, favor incumbents, as a matter of policy, all other things being equal?

(d) Should the Commission as a matter of policy favor Indian tribes with respect to projects on Indian reservations?

(e) On what assumptions regarding relicensing was the original license granted to MPC, and are those assumptions relevant here?

12. For purposes of Section 4(e) of the Federal Power Act, will the grant of a license to MPC interfere with or be inconsistent with the purpose for which the Flathead Reservation was created?

13. Will the Tribes be able to market Kerr Project output?

14. What other factors, if any, are relevant to the determination of which proposal is granted?

B. Issues Arising if MPC's Application is Granted.

1. What annual charge should be payable to the Tribes?

(a) What method (*i.e.*, indexing, "net benefits," "profitability," etc.) should be used?

(b) How should that method be applied?

(c) Is the annual charge subject to the Tribes' approval under Section 10(e) of the Federal Power Act?

C. Issues Arising If Tribes' Application is Granted.

1. (a) Do severance damages include the costs to the incumbent of replacing the output of the project, or merely the costs of facilities rendered useless?

(b) Given the answer to (a), what is the amount applicable in the present case?

2. What is MPC's "net investment" in Kerr?

3. What amount, if any, is properly contained in MPC's amortization reserve under Section 10(d)?

D. Issues Arising If Either Application is Granted.

1. What operating parameters, if any, should the license provide as to lake level regulation?

(a) What are the pertinent flood-control needs?

(b) What are the pertinent effects on power production?

(c) What are the pertinent recreation needs?

(d) What are the pertinent considerations as to Kokanee salmon, Canada geese, and other species of fish or wildlife?

(e) What are the pertinent irrigation needs?

(f) Should any parameters in the license be made only on an interim basis, subject to the outcome of studies now in progress?

2. What provision for maintaining suitable flows, if any, should the license contain?

(a) What are the pertinent impacts on salmon and other fish and wildlife?

(b) What are the pertinent effects on power production?

(c) What are the pertinent effects on flood control?

(d) What are the pertinent irrigation needs?

(e) Should any such provision be made on an interim basis, subject to the outcome of studies now in progress?

3. Are additional facilities for recreation needed?

4. (a) Whether the Irrigation Project or its water and power users should continue to receive low-cost power in an amount and at rates comparable to Article 26 of the original license (and the current operating agreement between MPC and the Irrigation Project):

(i) in accordance with a finding of the Secretary of the Interior pursuant to the Act of March 7, 1928, 45 Stat. 200, 212-13, concerning satisfactory terms and conditions for relicensing of the reserved or appropriated water rights claimed by or on behalf of the Irrigation Project?

(ii) in the absence of such a finding (if the Secretary declines to make or for any reason does not make such a finding)?

(b) If not, whether and what other appropriate compensation can and should be provided to the Irrigation Project or its water and power users for the continued use of the water power rights claimed by or on behalf of the Irrigation Project?

[65,068]

(c) Whether any party is precluded from asserting or objecting to any matter relating to a claim to continued receipt of low cost power by the Irrigation Project or its water and power users or to other appropriate compensation because of the doctrines of *res judicata* or collateral estoppel in light of the decisions in *Confederated Salish and Kootenai Tribes v. United States*, 181 Ct. Cl. 739 (1967), *Confederated Salish and Kootenai Tribes v. United States*, 417 F.2d 1340 (Ct. Cl. 1969), and *Confederated Salish and Kootenai Tribes v. United States*, 467 F.2d 1315 (Ct. Cl. 1972).

5. What other terms and conditions, if any, satisfactory to the Secretary of the Interior should the license be subject to by reason of Section 4(e) of the Federal Power Act or the Act of March 7, 1928, 45 Stat. 200, 212-13?

6. What should be the effective date and duration of the new license?

-- Footnotes --

¹ See Issue 10(b).

² For clarity, I have restated this issue to reflect the only noted compelled wheeling which may be the subject of an application in the near future. (Tr. 265, 274, 278).

ATTACHMENT B

1 FERC - 75 FERC, 32 FERC ¶61,070, The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project Nos. 5-004 and 2776-000, The Montana Power Company, Project No. 5-003, Confederated Salish and Kootenai Tribes of the Flathead Reservation v., Federal Energy Regulatory Commission, (Jul. 17, 1985)

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The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project Nos. 5-004 and 2776-000, The Montana Power Company, Project No. 5-003, Confederated Salish and Kootenai Tribes of the Flathead Reservation v. The Montana Power Company, Docket No. EL84-12-001

[61,175]

[¶61,070]

The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project Nos. 5-004 and 2776-000

The Montana Power Company, Project No. 5-003

Confederated Salish and Kootenai Tribes of the Flathead Reservation v. The Montana Power Company, Docket No. EL84-12-001

Order Approving Settlement and Issuing License

(Issued July 17, 1985)

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On March 29, 1985, the Montana Power Company (MPC), the Confederated Salish and Kootenai Tribes of the Flathead Reservation (Tribes), the Flathead, Mission, and Jocko Valley Irrigation Districts (jointly, Districts), the Montana Consumer Counsel (Consumer Counsel), and the Secretary of the Interior (Secretary) filed a proposed settlement in the above-captioned proceedings. On April 12, the Commission's trial staff filed comments upon the settlement recommending its approval. On April 16, 1985 [31 FERC ¶63,015], the presiding administrative law judge certified the offer of settlement to the Commission as uncontested. For the reasons set forth in this order, the settlement appears fair and reasonable and in the public interest, and is therefore approved.

I. Introduction

These proceedings concern the Kerr Project, Project No. 5, an existing three-unit hydroelectric project with a capacity of 180 megawatts located on the Flathead River, a navigable waterway of the United States in northwestern Montana. A portion of the project occupies lands within the Flathead Indian Reservation; those lands are held in trust by the United States for the benefit of the Tribes. The project also occupies 114.6 acres of lands of the United States (non-tribal) lands.

An initial 50-year license to construct and operate the Kerr Project was issued by the Federal Power Commission to the Rocky Mountain Power Company (a subsidiary of MPC) on May 23, 1930. The license was

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transferred to MPC in 1938. The dam and first generating unit began commercial operation in 1939, the second unit in 1949, and the third unit in 1954.¹

Under Article 30 of the initial license and Section 10(e) of the Federal Power Act, [16 U.S.C. §803](#) (e), MPC was required to pay a specified annual charge to the Tribes for the use and occupancy of their lands. That charge was subject to readjustment to reasonable levels at specified intervals after the commencement of commercial operations. The most recent readjustment in the annual charge, to \$2.6 million effective May 23, 1975, was the result of a settlement approved by the Commission in 1978.²

Article 26 of the initial license provided that the licensee make available to the Flathead Irrigation Project, which is managed by the Bureau of Indian Affairs of the Department of the Interior, up to 15,000 horsepower (11.2 megawatts) at specified rates and for specified purposes. The irrigation system of the Flathead Irrigation Project serves lands, most of which are held by non-Indians and some of which are held by Indians, within the Flathead Reservation.

Article 23 of the initial license authorized MPC to regulate Flathead Lake between elevations 2883 and 2893. A "Memorandum of Understanding" between MPC and the Army Corps of Engineers, dated May 31, 1962, and amended on October 15, 1965, specifies certain elevations that MPC is to seek to attain at given dates in order to accommodate flood control, recreational, and power-production needs.³ Within the limitations established by the Memorandum of Understanding, MPC has operated the project in accordance with the Pacific Northwest Coordination Agreement (PNCA), an agreement among the United States and the owners of various projects on the Columbia River and its tributaries concerning the coordination of project operations. Pursuant to that agreement, MPC pays to the United States, and receives from the operators of various downstream projects, annual coordination payments in satisfaction, among other things, of the obligations created by Section 10(f) of the Federal Power Act.⁴

The initial license for Kerr expired by its terms on May 22, 1980. Pending the issuance of a new license, the Commission has issued an annual license for the Project to MPC for each license year since then.⁵ Beginning in 1980, and in each year thereafter, the Tribes have petitioned for readjustment of the annual charge during each annual license period.⁶ MPC has opposed such readjustment, and, by order dated June 30, 1983, in [Project No. 5-003](#), the Commission denied each of the Tribes' requests.⁷ Appeal of that denial is now pending in the U.S. Court of Appeals for the District of Columbia Circuit.⁸

On June 1, 1976, MPC applied in [Project No. 5-004](#) for renewal of its license. On July 2, 1976, the Tribes filed a competing application ([Project No. 2776-000](#)) for a new license. On November 18, 1980, the Commission issued public notice of the applications. No other entity applied within the time allowed; nor did any federal agency recommend recapture of the Project under Section 14 of the Federal Power Act. [16 U.S.C. §807](#).

Intervention was granted to the Districts (representing most owners of irrigable lands served by the Flathead Irrigation Project), to the Secretary of the Interior, and to the Montana Consumer Counsel (a state agency created to protect the interests of ratepayers in proceedings before regulatory agencies). Comments on the applications were submitted by the Environmental Protection Agency, the Army Corps of Engineers, the Heritage and Conservation Service of the United States Department of the Interior, the Montana Department of Fish and Game (now the Montana Department of Fish, Wildlife and Parks), and the Fish and Wildlife Service of the Interior Department.

By order dated July 20, 1983, the Commission set the competing applications for hearing. On October 11, 1983, the presiding administrative law judge (ALJ) directed the Commission staff to submit an assessment of the need for an environmental impact statement (EIS) on the proposed relicensing. That assessment, filed on November 1, 1983, and revised on August 31, 1984, concluded that this relicensing would not be a major federal action significantly affecting the quality of the human environment and therefore no EIS was necessary.

Pursuant to a ruling by the ALJ as to the scope of the matters designated by the Commission for hearing, the Tribes filed, on April 16, 1984, an application in Docket No. EL84-12-000 seeking an order to compel MPC to wheel the output of the Kerr Project for the Tribes if they should receive the Kerr license. MPC protested, and by order dated July 25, 1984, the Commission denied the application.⁹ The Tribes' request for rehearing, filed August 24, 1984, is now pending before the Commission.¹⁰

Hearing sessions in the relicensing proceeding were held at Helena, Montana on July 11-13, and at Missoula on July 16-18. At a prehearing conference on September 6, 1984, the ALJ deferred further cross-examination to allow the parties to pursue settlement. Subsequent discussions gave rise to the

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settlement proposal now before us, in which all parties have joined, and in which the Commission's trial staff concurs.

II. Terms of Settlement

The terms of the proposed settlement are contained in a Stipulation and Agreement to which is attached a proposed Joint License. The main provisions may be briefly summarized as follows:

A 50-year license would issue jointly to MPC and the Tribes. Under that license MPC would hold and operate the project for the first 30 years of the term, and the Tribes would, upon paying MPC a specified amount (the original cost less depreciation of the project, with certain adjustments and additions), hold and operate the project for the balance of the term and any annual-license term thereafter. Conveyance of the project to the Tribes would occur on a date between the 30th and 40th anniversaries of the license, which date would be designated one year in advance by the Tribes.

The annual charge payable to the Tribes for the use of their lands while MPC holds and operates the project would be fixed at \$9 million, payable in advance quarterly. That amount would be adjusted every 12 months to reflect changes in the Consumer Price Index (CPI). It would not be subject to adjustment or change other than to reflect changes in the CPI unless MPC makes certain expansions of the project's generating capacity or if the Tribes cease to have the right to acquire the project, or if the project reverts to MPC due to the Tribes' failure to pay the full conveyance price.

MPC would undertake, after conveying the project to the Tribes, to wheel Kerr Project output to points of interconnection with Bonneville Power Administration for a non-discriminatory rate. It would also undertake to train tribal members to operate the project, beginning five years before conveyance.

MPC, while it owns the project, would sell power to the Flathead Irrigation Project (FIP) in the current amounts at an initial rate of 12 mills per kilowatt hour, which roughly approximates the cost of generation with an annual charge of \$9 million. In succeeding years, as the annual charge payable to the Tribes escalates with inflation, so too will the component (initially 8.5 mills) of the rate charged to the FIP that is attributable to the annual charge. The issue of whether the FIP would receive low cost power from the Tribes after they assume operation of the project would be deferred until 15 years after the effective date of the license, at which point that issue would, on petition by any interested person, become ripe for adjudication by the Commission. If any party wished to claim a larger low-cost block than that made available by MPC to the FIP, such claim would have to be filed within 10 years after the license takes effect, and promptly set for hearing. These requirements are intended to assure that any claim to low-cost power during the Tribes' tenure is resolved soon enough to avoid impeding the Tribes' efforts to market the project output.

MPC would maintain initial minimum flows of 3,200 cubic feet per second, pending completion of extensive ongoing fish and wildlife studies, subject to certain exceptions. Upon completion of the fish and wildlife studies, MPC would, after consultation with specified agencies, submit plans to further protect and enhance the fishery and wildlife resources of the project. Those plans would be subject to change after notice and opportunity for hearing. In other respects, subject to further Commission orders after notice and opportunity for hearing, and to fish and wildlife conditions that, upon completion in the previously-described studies, the Secretary may impose,

the project would continue to be operated as at present, i.e., in accordance with the PNCA, and with the 1962 Memorandum of Understanding with the Corps of Engineers, as amended in 1965.

The Stipulation and Agreement also provides that the Tribes will move to dismiss their appeal of the Commission order denying their claim to readjusted charges during the annual license period, grant their consent for MPC to obtain, upon payment of a specified sum, necessary rights of way for certain transmission and switchyard facilities, and consent to the denial of their request for compulsory wheeling in Docket No. EL84-12-000 .

By executing the Stipulation and Agreement, the Secretary has given all approvals and consent necessary to implementation of the settlement, and to the Tribes' being bound by the terms thereof.

III. Discussion

The settlement balances the competing interests of MPC ratepayers, tribal members, and irrigators while protecting fish, wildlife, and environmental values. It holds out the prospect of ending complex, costly litigation. We therefore approve it.

On the underlying issue of who receives the new license, the parties have agreed to a joint license arrangement under which, for the first 30 years, MPC's ratepayers will receive part of the benefits of Kerr's relatively low cost generating capability, with the Tribes' members receiving a part of such benefits

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through the annual charge. For the last 20 years, the Tribes' members will share such benefits with the ratepayers of the utility with whom the Tribes negotiate a sale of the output; the Tribes also will have the benefit of controlling the resource. MCP, by its undertaking to train tribal members and wheel project output for the Tribes, will facilitate the Tribes' assumption of the operator's role.

The annual charge payable by MPC to the Tribes while MPC operates the project, \$9 million adjusted annually for inflation, likewise represents a substantial increase over the present charge of \$2.6 million, as well as the \$3.25 million advocated by MPC, but is well below the amounts claimed by the Tribes (\$47 million) and the Secretary (\$30 million). Similarly, while MPC will receive a considerably increased rate for power sold to the FIP, that rate is still far below the rate at which Bonneville Power Administration supplies the rest of the irrigation project's needs.

With respect to recreation, MPC will install and improve certain facilities downstream of the powerhouse to improve access to the lower Flathead River. MPC submitted testimony suggesting that further recreational use of Flathead Lake is of questionable desirability for environmental reasons. No other party (or the staff) asserted the need for additional recreational facilities beyond those proposed, or for recreation conditions in the license other than those provided by the settlement.

Finally, fish, wildlife, and environmental values are protected and promoted by the settlement. Under the terms of the settlement such further specific conditions as appear appropriate and reasonable may be adopted upon completion in 1989 of the extensive fish and wildlife studies now underway in the project area. Initially, a new and more restrictive minimum flow requirement will go into effect upon issuance of the new license. If the matter were litigated, there is little chance that a minimum flow provision of any sort could become effective for at least two years, i.e., until the Commission had actually issued its decision on the recipient and terms of a new license.

The applicants state that studies concerning the possibility of installing a fourth unit to supply additional peaking capacity or upgrading the existing units to increase present capacity are being considered. We are therefore including a special article, Article 54, requiring the licensee to furnish an economic analysis, with supporting data, to evaluate the feasibility of installing an additional unit.

For the foregoing reasons, we approve the settlement proffered by the parties. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

The Commission finds:

- (1) The Kerr Project, FERC Project No. 5, as constituted under the license, affects lands of the United States, and is located on a navigable waterway of the United States.
- (2) The Applicant, Montana Power Company, is a corporation organized under the laws of the State of Montana. The Applicant Confederated Salish and Kootenai Tribes of the Flathead Reservation is an Indian tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. §461, *et seq.* Each Applicant has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.
- (3) Public notice of the application was given. Three requests to intervene were granted. A Joint Offer of Settlement filed March 29, 1985 by the Applicants and all of the intervenors are now before the Commission.
- (4) The project will not affect a Government dam, nor will the issuance of a license therefor, as herein provided, adversely affect the development of any water resources for public purposes that should be undertaken by the United States.
- (5) Subject to the terms and conditions hereinafter imposed, the project is best adapted to a comprehensive plan for improving or developing the waterways involved for the benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.
- (6) The Secretary has found satisfactory, and approved the terms of, the proposed Joint License.
- (7) Pursuant to the Act of March 4, 1929, 45 Stat. 1623, 1640, no administrative charges under [18 C.F.R. Part 11](#) are applicable to licensees of the Kerr Project.
- (8) The amount of the annual charge for the use of 114.6 acres of United States lands should be computed from time to time pursuant to the Commission's regulations.
- (9) The term of the license hereinafter authorized is reasonable.
- (10) The plans of project structures, insofar as the interests of navigation are

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concerned, have been approved by the U.S. Department of the Army, Corps of Engineers.

- (11) The Applicants have the necessary financial capabilities to construct and operate the project.
- (12) The joint license will not interfere or be inconsistent with the purpose for which the Flathead Indian Reservation was created.
- (13) There exists a need for a revised fish and wildlife plan for the project to be submitted after completion of certain studies ongoing within and around the project bounds.
- (14) There exists a need for a supplemental recreation plan for the project reflecting certain added facilities proposed by the Applicants.
- (15) The Exhibits designated and described in paragraph (B) below substantially conform to the Commission's Rules and Regulations and should be approved to the extent noted in the ordering paragraphs of the license.
- (16) No recommendation for federal takeover has been received.
- (17) Takeover of the Kerr Project is unwarranted, and it is in the public interest to issue a new license to the Applicants subject to the terms and conditions hereinafter imposed.
- (18) The action does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969, [42 U.S.C. §4321](#), *et seq.*

The Commission orders:

- I. The Stipulation and Agreement is hereby approved in its entirety and without modification.
- II. The Tribes' rehearing request in Docket No. EL84-12-001 is hereby deemed withdrawn, such withdrawal being conditioned on the joint license becoming effective in accordance with its terms.

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Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

III. Docket No. EL84-12-001 is hereby terminated, such termination being conditioned on the joint license becoming effective in accordance with its terms.

IV. The Tribes' complaint of April 12, 1983, is hereby denied, such denial being conditioned on the joint license becoming effective in accordance with its terms.

V. Within 50 days after the date of the issuance of this order, the joint licensees shall jointly notify the Commission in writing of whether the conditions specified in the stipulation and agreement have been satisfied and whether the joint license can become effective in accordance with its terms.

VI. The following joint license is hereby issued:

(A) This joint license is issued to the Montana Power Company of Butte, Montana (MPC), and to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana (the Tribes), under Section 15 of the Federal Power Act (the Act) and such other statutes as may apply. Subject to satisfaction of the conditions stated in Section 8.1 of the Stipulation and Agreement pursuant to which this license is issued, the license becomes effective on a date (the Effective Date) 50 days after the date of its issuance and continues for a term of 50 years from the Effective Date. It is for the continued operation and maintenance of the Kerr Project, Project No. 5, located on, and using waters of, the Flathead River, a navigable waterway of the United States, in Lake and Flathead Counties, Montana, and occupying lands of the Flathead Indian Reservation held by the United States in trust for the Tribes and 114.6 acres of lands of the United States (non-tribal lands). This license is subject to the terms and conditions of the Act, which is incorporated herein by reference as part hereof and subject to such rules and regulations as the Commission has issued or may issue or prescribe under the provisions of the Act, provided that in case of any conflict between paragraph (C) of Article 39 of this license and any present or future rules and regulations of the Commission, the provisions of this license shall control.

(B) The Kerr Project, Project No. 5, consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area, enclosed by the project boundary, and used and useful in the project operations. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

FERC

Exhibit No. 5- Showing

J-1 122 General Map of Project Area

J-2 123 General Map of Project Area

K-1 124 Detail Map of Project Area

K-2 125 Detail Map of Project Area

K-3 126 Detail Map of Project Area

K-4 127

Detail Map of Project Area

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K-5	128 Detail Map of Project Area
K-6	129 Detail Map of Project Area
K-7	130 Detail Map of Project Area
K-8	131 Detail Map of Project Area
K-9	132 Detail Map of Project Area
K-10	133 Detail Map of Project Area
K-11	134 Detail Map of Project Area
K-12	135 Detail Map of Project Area
K-13	136 Detail Map of Project Area
K-14	137 Detail Map of Project Area
K-15	138 Detail Map of Project Area

(2) Project works consisting of: (a) a reservoir with a surface area of approximately 126,000 acres and a storage capacity of 1,219,000 acre feet at power pool elevation of 2,893 feet m.s.l.; (b) a 200-foot-high, 381-foot long concrete arch dam with 14 spillway sections, each 21-foot-wide and 27-foot-high and a 30-foot-high, 185-foot-long gravity section extending from the right abutment of the arch dam; (c) three concrete lined pressure tunnels (penstocks) which are 23.33 feet in diameter, and 765, 785 and 865 feet long, respectively; (d) a steel frame power house, with reinforced concrete walls and roof, containing three generating units rated at 60-MW each; (e) transmission facilities, which consist of the generator leads, three 13.2/100 kV transformer banks, and three 1,500-foot-long, 115 kV transmission lines which extend from the powerhouse to the Kerr switchyard; and (f) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits above and more specifically shown and described in certain other exhibits that also form a part of the applications for license and that are designated and described as:

FERC

Exhibit	No. 5-	Showing
L-1	139	General Plan
L-2	140	Dam--Plan & Elevation
L-3	141	Dam--Arch Rings & Sections

L-4	142	Dam--Thrust Blocks, Gravity & Dike Sections
L-5	143	Dam--Apron & Protective Works
L-6	144	Dam--Spillway, Plan Elevation & Sections
L-7	145	Dam--Intake & Penstock Tunnels
L-8	146	Powerhouse--Operation Floor Plan
L-9	147	Powerhouse--Sections
L-10	148	Switchyard

Exhibit M consists of two typewritten pages entitled "General Description of Equipment," filed June 1, 1976.

FERC

Exhibit No. 5- Showing

R-1	149	Recreation Use Plan Map
R-2	150	Recreation Use Plan Map

Exhibit R, filed on June 1, 1976, and supplemented on May 1, 1979, and March 11, 1980, consisting of 15 pages of text, entitled "Recreational Use Plan."

(3) All of the structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all water, riparian, or other rights that are necessary or appropriate in the maintenance or operation of the project.

(C)(1) From the Effective Date until the Conveyance Date (as hereafter defined), MPC shall control, operate, maintain and have exclusive right to, and interest in, the project. During that period MPC shall have all of the rights and obligations of the licensee under this license. At any time between the 29th and 39th

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anniversaries of the Effective Date the Tribes may, in their sole discretion, on at least one year's written notice to MPC, the Secretary of the Interior (the Secretary), the Flathead, Mission, and Jocko Valley Irrigation Districts, (the Districts), and the Commission, designate a date for the conveyance of the project to the Tribes (the Conveyance Date), which date shall be no earlier than the 30th anniversary of the Effective Date and no later than the 40th anniversary of the Effective Date. On the Conveyance Date, upon receipt by MPC from the Tribes of the Estimated Conveyance Price (as hereafter defined) in effect on such date, all of MPC's interest in the project, free of any mortgages, liens, or encumbrances, shall, without any further action on the part of MPC, the Commission, or any other entity, vest in the Tribes. Thereafter, for the remainder of the term of this license, and any immediately following annual licenses, the Tribes will control, operate, maintain and have exclusive right to, and interest in, the project, and will have all of the rights and obligations of the licensee under this license, including right to any payment by any successor licensee or by the United States on takeover of the project. Upon the failure of the Tribes either (a) to designate a Conveyance Date within the time specified above, or (b) having timely designated a Conveyance Date, to pay the Estimated Conveyance Price on or before such date, the Tribes' right to have the project conveyed to them under this license shall terminate, and MPC shall continue to control, operate, maintain, and have exclusive right to, and interest in, the project for the remainder of the term of this license and any immediately following annual licenses. Unless the context connotes otherwise, the term "Licensee" shall, as used in this license, refer to MPC with respect to the license term prior to conveyance of the project, and, with respect to the remainder of the license term, refer to the Tribes.

(2) The term "Conveyance Price" shall mean the sum of (a) the actual original cost of the project (including any additions and improvements thereto) less accumulated depreciation, as reflected in MPC's FERC accounts (as those accounts are maintained in accordance with routine Commission audit and compliance procedures), as of the Conveyance Date; (b) the original cost, less accumulated depreciation as of the Conveyance Date, of any automatic control equipment located at MPC's dispatch center and not included in (a) that is being used as of the time of conveyance to control the operation of the project and for which MPC has no other comparable need after the conveyance; (c)(i) the cost to MPC of replacing any communications facilities that are among the project works conveyed to the Tribes, but that are, in addition, used and useful in the operation of MPC's integrated system, minus (ii) the original cost, less accumulated depreciation, of such equipment to the extent included in (a) above; and (d) the original cost of any flooding rights or other interests in realty outside the project boundary which interests, at the Conveyance Date, are used and useful in the operation of the Project, remain effective at least until the termination of this joint license, and are assignable to the Tribes.

(3)(a) No later than the 25th anniversary of the Effective Date, MPC shall provide the Tribes, the Secretary, and the Commission with a written estimate of the Conveyance Price as of the 30th anniversary of the Effective Date, together with an explanation of how that estimate was derived. MPC shall provide an updated estimate and explanation on or before the 27th anniversary of the Effective Date. Within 60 days after receipt of that updated estimate the Tribes shall, if they wish to dispute such estimate, so notify MPC, the Commission, and the Secretary in writing. If the Tribes do not give such notice, then such estimate shall, upon expiration of the notice period and until the establishment of a succeeding Estimated Conveyance Price under subparagraph (b), constitute the Estimated Conveyance Price.

If the Tribes do timely give such notice, and if the parties cannot resolve the dispute by negotiation within 60 days from such notice, then a board of arbitration, constituted as hereafter described, shall promptly be convened. The board shall estimate the Conveyance Price, as of the 30th anniversary of the Effective Date, which estimate shall, until the establishing of a succeeding Estimated Conveyance Price under subparagraph (b), constitute the Estimated Conveyance Price. The decision will explain in reasonable detail the basis for the estimate. The board will issue its decision no later than six months after the 28th anniversary of the Effective Date.

(b) If the designation of the Conveyance Date has not occurred by the 31st anniversary of the Effective Date, the MPC, within 30 days after such anniversary, will issue an updated estimate of the Conveyance Price as of one year and eleven months thereafter, i.e., as of the 33rd anniversary of the Effective Date. Such updated estimate shall be based on the same principles as those underlying the original Estimated Conveyance Price. Such updated estimate shall become the effective Estimated Conveyance Price if, within 60 days after receipt thereof, the Tribes do not give

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written notice that they dispute such updated estimate. If the Tribes do timely issue such notice, then the procedures for arbitration as provided in subparagraph (a) above shall apply, but the board's estimate shall be based upon the same principles as those underlying the original Estimated Conveyance Price and shall be issued within one year after such notice. Until the updated estimate has been fixed, whether by the failure of the Tribes to give notice, or by the board's decision, the previous Estimated Conveyance Price shall remain in effect. If the Conveyance Date has not been designated by the 34th or 37th anniversary of the Effective Date, the Estimated Conveyance Price shall, in each case, thereupon be updated in the manner provided in this subparagraph (b).

(c) Within 30 days after the conveyance of the project to the Tribes, MPC shall provide the Tribes, the Secretary, and the Commission with a written statement of the actual Conveyance Price as MPC calculates it, together with an explanation of how that figure was derived. The actual Conveyance Price shall differ from the Estimated Conveyance Price established pursuant to subparagraphs(a) and (b) above only to reflect events, circumstances, and the passage of time after establishment of the Estimated Conveyance Price. If the Tribes wish to dispute the Conveyance Price as calculated by MPC, they shall, within 60 days of receipt of MPC's statement, so notify MPC, the Secretary, and the Commission in writing. If the two parties cannot resolve the dispute by negotiation within 60 days from such notice, the matter shall then be submitted to a board of arbitration, which shall fix the actual Conveyance Price, taking into account only the Estimated Conveyance price and events, circumstances, and the passage of time between the time at which such Estimated Conveyance Price was fixed and the Conveyance Date.

(d) Within 90 days after the decision of the board of arbitration as to the actual Conveyance Price, or, if the Tribes have not disputed MPC's calculation of such price, within 90 days after the time for giving notice of such dispute has expired, any difference between the Estimated Conveyance Price and the actual Conveyance Price shall be paid by the party owing such difference to the other party. In addition, such party will pay the other party interest on such difference for the period between the Conveyance Date and the date of payment. Such interest shall be at the rate of three percentage points (300 basis points) above the most recent (as of the time of payment) auction rate for U.S. Treasury bills having maturities of 180 days.

(e) Any arbitration proceedings pursuant to this paragraph (C) shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (the AAA), subject to any additional rules or provisions existing under Federal law. The board of arbitration shall consist of one member selected by the Tribes, one member selected by MPC, and a third member selected by the other two members. If the latter cannot agree upon a third member, then such member shall be selected by the AAA. The decision of the board shall be final and binding upon the parties. Any court proceeding arising out of the arbitration proceedings shall, to the extent possible, be brought in Federal court.

(4) Payment of the Estimated Conveyance Price and of any difference between that amount and the actual Conveyance Price shall be by cash, by check drawn on the United States Treasury, or by treasurer's check of a bank incorporated or chartered in the United States and having assets in excess of three billion dollars. MPC shall, on the Conveyance Date, provide such documents or other evidence of the conveyance of its interest in the project as the Tribes may reasonably request.

(5) Payment in accordance with this paragraph (C) shall fully discharge any obligation by the Tribes for payments to MPC under Section 15(a) of the Act, and under any comparable future provision of federal law, arising out of conveyance of MPC's interest in the project as provided in paragraph (C).

(D) In the event that any amount required to be paid under paragraph C(3)(d) or under Article 39 of this joint license, or under Section VI of the Stipulation and Agreement pursuant to which it is issued, shall not be timely paid, the Commission may, upon petition by the party to whom such payment is to be made and after opportunity for hearing, enter such order as may be reasonable and appropriate to make the party to which such payment is due whole, including, in the case of a payment due from MPC, an order accelerating the Conveyance Date and related procedures, and, in the case of a payment due from the Tribes, an order directing reconveyance of the Licensee's interest in the project to MPC. Nothing in this paragraph (D) shall limit any powers that the Commission or the courts could otherwise exercise.

(E) This license is also subject to the terms and conditions set forth in Form L-5 (Revised October 1975) entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," which terms and conditions designated as Articles 1 through 37 are

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attached hereto (reported at 54 FPC 1832) and made a part hereof, except as follows:

(1) Except to the extent that emergency shall require for the protection of navigation, life, health or property, Articles 3, 5, 13, 15, 16, 17, 18, 21, 22, and 28, as applied to that portion of Flathead Lake within the boundaries of the Flathead Indian Reservation or to land and water rights owned or regulated by the Tribes, shall not be deemed to diminish or interfere with any ownership or other rights that the Tribes may have, or jurisdiction the Tribes may exercise, pursuant to, by reason of, or deriving directly or indirectly from, the Treaty of Hell Gate of July 16, 1855, 12 Stat. 975, or the Tribes' status as an Indian tribe, and in the event of any conflict between any such article and said rights or jurisdiction, the latter shall be deemed controlling.

(2) Nothing in Articles 6 or 36 shall be deemed to require the Tribes to relinquish at the end of the license term any land or water rights other than rights the Tribes acquired by reason of becoming a project licensee.

(3) The term "lands of the United States", as used in Articles 26, 28, 29, 30, 31, 33, 34, and 36, shall not be deemed to include lands held by the United States in trust for the Tribes or for individual Indians.

(4) Nothing in Article 13 shall be deemed to confer, enlarge, or diminish any right that may otherwise be claimed by the Tribes to compensation for any benefits that are conferred on the FIP, the Districts, or others pursuant to Article 40.

(5) The authority exercised by the Secretary under Articles 45 and 46 shall not be deemed to affect, or be affected by, any authority the Secretary may exercise under Articles 1-37.

(F) This license is also subject to the following conditions, which are set forth herein as additional articles:

Article 38. Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year under the license (or if for the period covered by the initial Project No. 5 license, and the annual licenses issued for the project thereafter, there is a deficiency of project earnings below the rate specified in Article 34 of such initial license), the amount of such deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts thus established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted cost components of long-term debt of the Licensee, preferred stock of the Licensee (if any), and the cost of common equity of the Licensee (if any), as defined below. The annual weighted cost component for each element of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the

rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Upon conveyance of the project to the Tribes, the Tribes will establish an amortization reserve account containing an amount equal to the amount in MPC's amortization reserve account as of that time. The account will thereafter be maintained by the Tribes from year to year, in accordance with annual project earnings and the Tribes' annual specified rate of return calculated as provided above, and MPC will have no further obligation to maintain such an account with respect to the project. Neither the Conveyance Price payable under paragraph (C) above, nor any of the costs used to derive said price, shall be reduced or otherwise affected by the amount contained in MPC's amortization reserve account at any time.

Article 39. (a) MPC shall pay, pursuant to Section 10(e) of the Act, an annual charge for the use and occupancy of the Tribes' lands by the project prior to conveyance of the project to the Tribes. For the initial license year (i.e., the twelve months beginning with the Effective Date) the annual charge shall be \$9,000,000. The annual charge for each

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succeeding license year, until the conveyance of the project to the Tribes, shall be \$9,000,000 times "CPI(S)" divided by "CPI(I)", where "CPI(I)" equals the Consumer Price Index (as hereafter defined) for that month (the "Base Month") in which the day 90 days before the Effective Date falls, and "CPI(S)" equals the Consumer Price Index for the same month (as the Base Month) in such succeeding license year.

(b)(i) In the event that, after the Effective Date, the Commission authorizes an addition or additions (A) to the three generating units installed as of the Effective Date, which addition or additions, in the aggregate, are in excess of 32 megawatts, or (B) of one or more new generating units (regardless of capacity), then the Commission shall, upon petition and after opportunity for hearing, fix a reasonable annual charge with respect to, and effective as of the initial commercial operation of, such excess generating capacity or new generating unit (but not with respect to the generating capacity of the first three units installed as of the Effective Date or the first 32 megawatts of capacity added thereto). Such added annual charge may thereafter be readjusted as provided by Section 10(e) of the Act. Nothing in this paragraph shall be deemed to constitute consent by MPC or the Tribes to any such addition of units or capacity.

(b)(ii) Upon the termination of the Tribes' right under paragraph (C) of this joint license to acquire MPC's interest in the project, whether because they have failed to give the requisite notice, or because, having given such notice, they have failed to make the requisite payment, or upon any reconveyance of the project to MPC pursuant to paragraph (D) of this license, the Commission may, upon petition filed no earlier than the date on which the Tribes cease to have such right, or on which such reconveyance occurs, and after opportunity for hearing, readjust the annual charge specified in (a) above, as provided by Section 10(e) of the Act, provided that no such readjustment will be effective as of a date prior to the filing of the petition.

(c) The annual charge for each license year prior to the Conveyance Date shall be paid in equal quarterly installments due, respectively, on the first day of each license year, on the date three months after such date, the date six months after such date, and the date nine months after such date. Payment for the quarter in which the project is to be conveyed to the Tribes shall be prorated in accordance with the number of days preceding such conveyance. Each payment shall be made so as to be received by the Tribes on the date due at an address or bank depository designated by the Tribes in writing to MPC.

(d) Payment in accordance with (a), (b) and (c) above shall fully discharge MPC's obligations under Section 10(e) of the Act during the term of this license. By their acceptance of this license, the Tribes and MPC expressly waive any right, other than as provided in (a) and (b), to readjustment or modification of the annual charges

at any time during said term, and, by his approval of this license, the Secretary expressly agrees to be bound thereby.

(e) "Consumer Price Index" for a month shall mean the "U.S. Consumer Price Index, All Items, All Urban Consumers (CPI-U)," for that month published by the Bureau of Labor Statistics of the United States Department of Labor. (By way of illustration, for August 1984, that index was 313.0 on a 1967 base of 100.0). If the Consumer Price Index ceases to be publicly available, or the method of calculation of such index changes so that it is no longer substantially comparable to the CPI as of the Effective Date, the GNP Deflator published monthly by the U.S. Department of Commerce will be employed in its stead for purposes of this license. If both the Consumer Price Index and the GNP Deflator cease to be available, or, if the method of calculating both has changed substantially since the Effective Date, the Commission shall, upon petition by any interested person, and after opportunity for reply, select a comparable index to measure monthly changes in consumer prices for purposes of adjusting the annual charge in accordance with (a) above.

Article 40. (a) From the Effective Date until such time as MPC conveys the project to the Tribes, under this license or any amendment thereto, it will make available to the United States, for and on behalf of the FIP or the Districts comprising the same, capacity and energy at the Kerr Project 100 kV bus in the following amounts:

- (i) During all months of the year, up to 7.466 megawatts of capacity at up to 100 percent load factor;
- (ii) During the months of April through October, additional capacity of up to 3.734 megawatts at up to 100 percent load factor.

The rate payable to MPC for energy taken by the United States during the first license year (i.e., from the Effective Date until the date one year after the Effective Date) will be 12 mills per kWh. The rate per kWh in each succeeding license year will be the sum of (a) 3.5 mills and (b) 8.5 mills times "CPI(S)" divided by "CPI(I)", where "CPI(I)" and "CPI(S)" are as defined in Article 39. No

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demand charge shall be payable with respect to the sale under this Article 40(a).

(b) The United States reserves to itself or the FIP management for the period prior to conveyance of the project to the Tribes the exclusive right to sell power within the boundaries of the Flathead Indian Reservation to the extent of 7.466 megawatts to be delivered for use and/or sale as provided in Article 40(a) above.

(c) This joint license does not cover or resolve the questions of whether, from the time the project is conveyed by MPC to the Tribes until the expiration of the joint license, (i) the Tribes must make any part of the output from the project available to the United States, for and on behalf of FIP or the Districts, or if so on what terms or conditions, or (ii) the United States may reserve for itself the exclusive right to sell power within the boundaries of the Reservation. Such matters are expressly reserved for resolution hereafter by agreement of the parties, with the approval of the Commission, for insertion in this joint license as a term hereof, or, failing such agreement, by the Commission, as provided below, subject to the authority of the Secretary to the extent provided by applicable law. Upon request of (i) the Tribes, the Secretary, or the Districts, made any time after the fifteenth anniversary of the Effective Date, or (ii) the Secretary or the Districts made after the ninth but before the tenth anniversary of the Effective Date (or upon any earlier request concurred in by the Tribes, the Secretary, and the Districts), the Commission shall set such matters for hearing within twelve months of the date of the request; provided, that if neither the Secretary nor the Districts make any such request to the Commission prior to such tenth anniversary date, the Secretary and the Districts shall forever be barred from claiming, with respect to the period of this license following the conveyance of the project to the Tribes, for or on behalf of the United States, FIP, the Districts, or anyone else, a portion of the project's output greater than that which is required to be made available under Article 40(a) of this license.

Article 41. The Licensee hereby recognizes the right of the United States to pump water from Flathead Lake or from Flathead River above Licensee's dam for all purposes of irrigation on the Flathead Irrigation Project or on lands of the Flathead Reservation whether included in the Irrigation Project or not, but not more than 50,000 acre-feet of water shall be pumped therefrom after July 15 within any one calendar year.

Article 42. The Licensee agrees that all rights acquired in connection with the project covered by this license and the use of water for the development of power shall be held subject to the water rights which may be reasonably necessary for the complete development of the irrigable land and the domestic water supply requirements on the Flathead Reservation in the watershed above the project works. The Licensee further agrees to waive objections to the subtractions of such water, up to a maximum flow of 200 cubic feet per second, as may be authorized under Federal or State law for diversion out of the watershed above the project works for use on the Reservation.

Article 43. Article 12 above notwithstanding, it is specifically understood that, during the term of this license, the Licensee may regulate Flathead Lake between elevations 2883 and 2893 in such manner as will make not less than 1,219,000 acre feet of storage capacity available to the Licensee. Unless otherwise ordered by the Commission after notice and opportunity for hearing, and subject to Article 44 below, such regulation shall be in accordance with the Memorandum of Understanding between MPC and the Corps of Engineers dated May 31, 1962, as amended on October 15, 1965, and approved by the Federal Power Commission in *Montana Power Co.*, 35 FPC 250 (1966). It is expressly understood that if and when water is pumped from Flathead Lake or from Flathead River above Licensee's dam after July 15th in any year for purposes of irrigation as provided in Article 41 hereof, the Licensee shall be permitted, in the months of January, February and March of the next succeeding year, to regulate Flathead Lake below the minimum elevation which may be fixed as foresaid, to the extent necessary to enable it to recover the amount of water so pumped for irrigation purposes. Said elevations are in feet above mean sea level as determined by reference to a certain U.S. Geological Survey bench mark, elevation 2910.882 feet, stamped "2900 N", as now located and established at Somers, Flathead County, or to such other bench marks as may be established by the U.S. Geological Survey having the same datum. The Licensee also agrees to perform such channel excavation and other work as may reasonably be required by the Commission after notice and opportunity for hearing for the purpose of flood control to the end that the normal flood levels of Flathead Lake shall not be increased by reason of the installation of the project works, and for the purpose of full utilization of storage and navigation.

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Article 44. (a) Pending implementation of the plan described in Article 45, Licensee shall maintain a continuous minimum outflow of 3,200 cubic feet per second (cfs), as measured immediately downstream from the project powerhouse, provided that at times during the period between July 1 and September 15 when the elevation of Flathead Lake is below 2,892.7 feet, the outflow may be reduced below 3,200 cfs to a rate equal to the greater of (i) the average of the past 15 days' deduced inflow into the Lake, or (ii) 2,200 cfs.

(b) The flows provided in paragraph (a) may be temporarily modified for periods of up to two hours if, because of operating emergencies (other than emergencies based on recreational needs) such modification is, in the sole judgment of the Licensee, required. The flows provided in paragraph (a) may also be modified for short periods upon mutual agreement of MPC, the Secretary, and the Tribes.

Article 45. (a) MPC shall file, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, and the Department of the Interior, and by October 1, 1989, a fish resource mitigative and management plan that shall include among other things: (1) the results of (a) fishery studies sponsored by the Bonneville Power Administration and (b) other studies to determine the effects of project operation on the fish resources of Flathead Lake and the lower Flathead River; and (2) for Commission approval, specific measures to protect and enhance the fish resources associated with the Kerr Project on Flathead Lake and the Lower Flathead River, including an implementation schedule and cost estimates. Agency comments on the plan shall be included in the filing. The Commission reserves the right, after notice and opportunity for hearing, either to require appropriate changes in the plan or adopt such plan as filed.

(b) Notwithstanding the adoption of conservation measures pursuant to the preceding provisions of this article, and without resolving the question of whether Section 4(e) of the Act applies to this proceeding, the Secretary shall be allowed, within a reasonable time upon completion of the studies described in Articles 45(a), 46(a), and 47, to impose such reasonable license conditions with respect to fish and related environmental concerns as the

Secretary would be empowered under Section 4(e) to require with respect to an initial license. Such conditions will be imposed in accordance with the procedures developed for the formulation of Section 4(e) conditions, and, in any event, for the formulation of these license conditions, such procedures will include notice and opportunity for hearing. Upon receipt of the Secretary's conditions, the Commission by order shall adopt and include the conditions in their entirety in this license. MPC, the Tribes, and the Districts agree to waive, and do hereby waive, any claim that they might have that imposition of terms and conditions at that time, rather than during the course of the relicensing proceedings, is untimely.

Article 46. (a) MPC shall file, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, and the Department of the Interior, and by October 1, 1989, a wildlife mitigative and management plan that shall include among other things: (1) the results of (a) studies sponsored by the Bonneville Power Administration being conducted to determine the effect of project operations on the wildlife resources of Flathead Lake and the lower Flathead River, and (b) other studies to determine the effect of project operation on the wildlife resources of Flathead Lake and the lower Flathead River; and (2) for Commission approval, specific measures to protect and enhance the wildlife resources associated with the Kerr Project on Flathead Lake and the Lower Flathead River, including an implementation schedule and cost estimates. Agency comments on the plan shall be included in the filing. The Commission reserves the right, after notice and opportunity for hearing, either to require appropriate changes in the plan or adopt such plan as filed.

(b) Notwithstanding the adoption of conservation measures pursuant to the preceding provisions of this article, and without resolving the question of whether Section 4(e) of the Act applies to this proceeding, the Secretary shall be allowed, within a reasonable time upon completion of the studies described in Articles 45(a), 46(a), and 47, to impose such reasonable license conditions with respect to wildlife and related environmental concerns as the Secretary would be empowered under Section 4(e) to require with respect to an initial license. Such conditions will be imposed in accordance with the procedures developed for the formulation of Section 4(e) conditions, and, in any event, for the formulation of these license conditions, such procedures will include notice and opportunity for hearing. Upon receipt of the Secretary's conditions, the Commission by order shall adopt and include the conditions in their entirety in this license. MPC, the Tribes, and the Districts agree to waive, and do hereby waive, any claim that they might have that imposition of terms and conditions at that

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time, rather than during the course of the relicensing proceedings, is untimely.

Article 47. MPC shall, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, the Department of the Interior, and the Commission staff develop a study plan to determine what measures, if any, are necessary and appropriate to mitigate loss, if any, of wildlife habitat on the delta and nearby islands at the head of Flathead Lake due to project operations. The plan shall address, but not be limited to, a determination of: (a) the environmental value of, and need for, the types of habitat being lost, if any, including whether adequate nearby replacement habitat already exists; (b) any project factors contributing to habitat losses, if any; (c) the feasibility of preventing habitat losses and the types and costs of any measures or changes in project operation that would be necessary to prevent such losses; and (d) the availability of nearby lands that could be developed as replacement habitat, the cost of acquiring those lands, and the types of costs of any measures that would be necessary to develop replacement habitat on those lands. The results of the study shall be submitted to the Commission by October 1, 1989, along with the comments from the consulted agencies relating to the results of the study. MPC shall, at the same time, file with the Commission for approval, with copies to the agencies consulted, its recommendation for changes, if any, in project operation or other measures, including development of replacement habitat, that are necessary to mitigate for loss, if any, of wildlife habitat on the delta and nearby islands at the head of Flathead Lake. Documentation of agency consultation on the recommendation shall be included in the filing. Such recommendations may thereafter be modified or adopted by the Commission after notice and opportunity for hearing.

Article 48. Within one year from the date of issuance of this license Licensee shall, after consultation with the appropriate Federal, state and local agencies, prepare and file with the Commission for approval a report that

describes provisions for development of recreational facilities below the dam, including consideration of facilities for the handicapped. Further, the filing shall include a drawing showing the type and location of the facilities to be provided at the project, a construction schedule, and documentation of consultation with the appropriate agencies. Such recommendation may thereafter be modified or adopted by the Commission after notice and opportunity for hearing.

Article 49. Payments made by the Licensee under Section 13 of the Pacific Northwest Coordination Agreement, dated September 15, 1964, as amended, or under any successor agreement approved by the Commission, shall be deemed fully to discharge Licensee's obligations under Article 11 above, and under Section 10(f) of the Federal Power Act with respect to the Kerr Project.

Article 50. (a) During the time that the Tribes own and operate the Kerr Project under this license MPC will transmit for the Tribes the output of the project from the Kerr switchyard to any point of interconnection between MPC's system and the Bonneville Power Administration, or to such other points as the Tribes and MPC may hereafter agree upon. After expiration of this license, and of any annual licenses issued immediately thereafter, MPC shall be obligated to perform such transmission service for the Tribes for so long as the Tribes continue to own and operate the project (but in no event after February 1, 2095) if and to the extent that MPC has sufficient transmission capacity beyond capacity that it reasonably deems to be required for its own system operations.

(b) Transmission under (a) shall be at rates that are not unduly discriminatory and are otherwise in accordance with law. MPC will be free unilaterally to change such rates from time to time, and the Tribes will be free to oppose such changes in proceedings before any agency having jurisdiction over such rates. The Tribes shall be entitled to refund, with interest in the amount then provided by law, of the portion of any such rates held to be excessive for the entire period such rates were in effect.

Article 51. (a) Subject to the other terms and conditions of this license, MPC will undertake at its cost to train individual tribal members to assume the operation and maintenance of the Kerr Project beginning 30 years after the Effective Date. Such training will begin 25 years after the Effective Date. Personnel for a total of eleven positions will be trained, such positions to be selected by the Tribes from among the following job titles:

- 1 - Accounting Department Personnel
- 1 - Plant Superintendent/Engineer
- 1 - Operating Supervisor
- 1 - Maintenance Supervisor
- 1 - Scheduler/Dispatcher
- 5 - Dispatchers/Operators
- 2 - Mechanics
- 2 - Maintenance Electricians

provided, that if the Tribes' proposed method of operating the project requires fewer than eleven positions, MPC's obligation to train will be reduced to such lesser number. The

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individuals to be trained will be selected and paid during training solely by the Tribes. The training provided will be sufficient to enable the trainees to operate and maintain the project in substantially the same manner, and within the substantially same standards, as MPC's employees. In the event that, in MPC's view, an individual selected by the Tribes is unwilling or unable satisfactorily to complete the training program, MPC will notify the Tribes, who may (but shall not be required to) remove and replace the trainee with another trainee, provided that in no event will MPC be required to provide training to more than two individuals for the same position.

(b) In the event that, after commencement of the training program, a vacancy occurs in any position at MPC which primarily involves the operation of the Kerr Project and is comparable to a position for which MPC is providing training to tribal members hereunder, MPC shall offer the position to a tribal member who has

received sufficient training from MPC to qualify for the position. Any such individuals shall be employed by MPC subject to the same terms and conditions, and shall be entitled to the same rights and benefits, as are other MPC employees filling comparable positions, but MPC shall not be required to retain any such individuals as employees of MPC beyond the Conveyance Date.

Article 52. Licensee shall, in consultation with the Montana State Historic Preservation Officer (SHPO), the Salish Cultural Committee, and the Kootenai Cultural Committee, (the latter two bodies having been created by resolution of the Tribes' Tribal Council) develop a cultural resources management plan to periodically monitor known archeological and historical sites affected by the project operation as reflected in Exhibit V to MPC's license application. The cultural resources management plan should contain procedures that would be implemented in the event any site is affected by project operation. The plan shall be filed with the Commission within one year of the issuance of this license, and contain a copy of a letter from the SHPO accepting the plan. If any known sites should become affected by project operation, the Licensee shall implement reasonable measures to protect such sites. The Licensee shall make available funds in a reasonable amount for any such work as required.

If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works by or on the behalf of the Licensee, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites in light of the criteria set forth in 36 C.F.R. §60.4 (1984), and the Licensee shall consult with the SHPO, the Salish Cultural Committee, and the Kootenai Cultural Committee to develop a mitigation plan for the protection of significant archeological or historical resources as determined by such criteria. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right after notice and opportunity for hearing to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 53. The Licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 114.6 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 54. The Licensee shall, within one year from the date of issuance of the license, prepare and file with the Commission a feasibility analysis of installing additional generating capacity, taking into account, to the extent reasonable, all benefits including any contribution to the conservation of nonrenewable energy resources. If the study shows additional capacity to be economically feasible, the Licensee shall simultaneously file a plan and schedule for filing an application to amend its license to install that capacity.

This order is final unless an application for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the Act. The filing of an application for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The Licensees' failure to file an application for rehearing shall constitute acceptance of this license. In acknowledgment of acceptance of this license and its terms and conditions, it shall be signed by the Licensees and returned to the Commission within 60 days from the date this order is issued.

-- Footnotes --

¹ In 1976 the Federal Power Commission deleted from the license certain transmission lines running from Kerr to Missoula (Rattlesnake) and Anaconda to the south, and from Kerr to Thompson Falls to the west, on the ground that such lines were no longer "primary lines" under Section 3(11) of the Federal

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Power Act. The Kerr switchyard was also deleted. *Montana Power Co.*, 56 FPC 3290 (1976).

²*Montana Power Co.*, [5 FERC ¶61,126](#) (1978). On April 12, 1983, the Tribes complained to the Commission that MPC's payment of the annual charge for 1982 had been untimely. MPC responded on May 12, 1983, and the complaint is now pending before the Commission.

³The Federal Power Commission approved the agreement in *Montana Power Co.*, 35 FPC 250 (1966).

⁴[16 U.S.C. §803](#) (f). Payments to the United States are for storage benefits conferred by the Hungry Horse Project, operated by the Bureau of Reclamation, in the South Fork of the Flathead River, upstream of Kerr.

⁵See Notice of Issuance of Annual License, 45 Fed. Reg. 27,814 (1980).

⁶The Tribes filed their most recent petition on May 21, 1985, for the sixth annual license beginning on May 23, 1985.

⁷*Montana Power Co.*, [23 FERC ¶61,464](#) (1983), *reh'g denied*, [24 FERC ¶61,240](#) (1983).

⁸*Confederated Salish and Kootenai Tribes v. F.E.R.C.*, No. 83-1980 (D.C. Cir., filed September 13, 1983). By order dated October 24, 1984, the court, having been advised of the instant settlement, stayed further proceedings pending Commission action on the settlement.

⁹*Confederated Salish and Kootenai Tribes v. Montana Power Co.*, [28 FERC ¶61,141](#) (1984).

¹⁰Granted for purposes of further consideration on September 21, 1984.