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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Thomas C. Buchanan, Chairman; Claude L. Draper, Nelson Lee
Commissioners: Smith and Harrington Wimberly.

February 5, 1952

In the Matter of

Public Utility District No. 1
of Pend Oreille County, Washington

Project No. 2042

ORDER ISSUING LICENSE (MAJOR)

Application was filed October 8, 1951, by Public Utility District No. 1 of Pend Oreille County, Newport, Washington, for license under the Federal Power Act (hereinafter referred to as the Act) for proposed major Project No. 2042, known as the Box Canyon Project, to be located on the Pend Oreille River in Pend Oreille County, Washington, and Bonner County, Idaho, at a site about three miles north of the Town of Ione, Pend Oreille County, Washington, and affecting public lands, lands of the United States within Kaniksu National Forest, and allotted lands within Calispel Indian Reservation.

The Clark Fork River has its source in the Rocky Mountains near Butte, Montana. It follows a northwesterly course to St. Regis, Montana, and then flows eastward 26 miles to the mouth of the Flathead River, its largest tributary, where it resumes its course northwestward to Pend Oreille Lake in Idaho. From Pend Oreille Lake to the Columbia River into which it flows, the stream is called the Pend Oreille River. This stretch flows westward from the lake to the Washington-Idaho line, thence northerly to the international boundary between the United States and the Dominion of Canada. Just north of the boundary, the Pend Oreille River resumes its westward course to its mouth on the Columbia River.

In its December 15, 1936 order authorizing issuance of a license to Pend Oreille Mines & Metals Company for proposed Project No. 1393 on the Pend Oreille River at Meteline Falls approximately 8 miles downstream from the proposed Box Canyon project, the Commission found, among other things, that the project is situated along and in a navigable water of the United States.

In its December 15, 1936 order denying an application for license filed by Hugh L. Cooper, of New York City, for proposed Project No. 44, known as the Z Canyon project, situated on the Pend Oreille River (Clark Fork) 13 miles downstream from the Box Canyon project, the Commission found, among other things, that the project is located on, across, along, and in, and will affect the navigable capacity of the Clark Fork of the Columbia River, a navigable water of the United States. The application was denied because the applicant failed to make the required showing of his financial ability to construct the project and of a market for the project power.

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The proposed project would consist of:

- (a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; the location of such lands being tentatively shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2042-11) a general map entitled "Box Canyon Power Project"

Exhibit K: Land maps in 9 sheets (FPC No. 2042-12 through FPC No. 2042-20), entitled "Box Canyon Project"

---all of the above-described exhibits having been signed on September 28, 1951: Public Utility District No. 1 by John M. Fountain, Commissioner, Chairman; F. R. Jordan, Commissioner; and F. W. Schwab, Commissioner, Secretary.

(b) Principal structures consisting of:

1. A dam, comprising a spillway gate structure with an over-all length of about 260 feet and containing four split-leaf, vertical lift, fixed wheel gates each 40 feet wide and 69 feet high;
2. A reservoir backing water upstream about 55 miles to the Albeni Falls Project of the Corps of Engineers with pondage only, for load factoring purposes whenever the flow of river is below about 20,000 cubic feet per second;
3. A forebay open channel extending about 400 feet downstream along the left bank of the river, with stop-log ice sluice at the lower end;
4. A powerhouse to contain four vertical turbine-generator units each of 24,500 horsepower at 41-foot net head, and 15,000 kilowatt rated capacity (total 60,000 kw at 0.9 P.F., and 98,000 horsepower);
5. A switchyard containing the necessary switching and transforming equipment; and
6. Miscellaneous structures and facilities.

--the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: Plans in six sheets, signed on September 28, 1951: Public Utility District No. 1, by John M. Fountain, Commissioner, Chairman; F. R. Jordan, Commissioner; and Attest: F. W. Schwab, Commissioner, Secretary; and entitled:

Sheet 1: (FPC No. 2042-2) "Box Canyon Power Project - General Plan."

Sheet 4: (FPC No. 2042-5) "Box Canyon Power Project - Typical Sections - Water Conductors."

Sheet 6: (FPC No. 2042-7) "Box Canyon Power Project - Powerhouse - Plan & Sections - Sheet 1."

Sheet 7: (FPC No. 2042-8) "Box Canyon Power Project - Powerhouse - Plan & Sections - Sheet 2."

Sheet 8: (FPC No. 2042-9) "Box Canyon Power Project - One Line Diagram."

Sheet 9: (FPC No. 2042-10) "Box Canyon Power Project - Switch Yard - Plan & Section."

Exhibit M: (in three sheets) entitled "General Description and Specifications of Equipment," signed Public Utility District No. 1 of Pend Oreille County by John M. Fountain, President; E. R. Jordan, Commissioner; and F. W. Schwab, Secretary; and filed with the Commission on December 5, 1951.

- (c) All other structures, fixtures, equipment, or facilities used or useful in the construction, operation, and maintenance of the project and located in the project area, including such portable property as may be used or useful in connection with the project whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian and other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

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The Exhibit K maps referred to in paragraph (a) above are not complete in that the extent to which the project will encroach upon lands of the United States is not presently determinable, and the acreage of land encroached upon by the project works in each subdivision is omitted from the maps. It will be necessary, therefore, for the applicant to re-submit completed Exhibit K maps at a later date for Commission approval as hereinafter provided.

The Commission issued a preliminary permit to the applicant herein for a period of six months, effective as of February 1, 1951, which permit, pursuant to application therefor, was extended to December 31, 1951 by Commission order dated October 2, 1951.

The Acting Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Kaniksu National Forest, the Office of the Chief of Engineers, Department of the Army, and the Acting Secretary of the Interior, have reported on the application.

Numerous informal protests against the application and requests for hearing thereon have been received from owners of farm land and others in the vicinity of the proposed project who allege that:

- (1) They have received no assurance from the applicant herein that they will be adequately compensated for any resulting damage;
- (2) There is no actual need for additional power in the area;
- (3) There is no satisfactory showing of any economic necessity for construction of the project; and
- (4) Any benefits derived from the project would not offset resulting flood damage to privately-owned property.

In addition to the protests just referred to, a substantial number of individuals as members of the Calispel Indian Tribe have protested informally against the application and requested a hearing thereon alleging probable damage to pasture and hay lands.

Having given full consideration to these protests, it should be noted that:

- (1) The Federal Power Act requires, as hereinafter provided, that the licensee shall conform with such rules and regulations as the Commission may prescribe for the protection of life, health, and property, and the licensee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project - the determination and fixing of such damages being a matter for the local courts of competent jurisdiction to decide when satisfactory settlement cannot be negotiated.

- (2) The Pacific Northwest Region has been deficient in dependable capacity to supply the area loads from 1946 to 1951 and will continue to be deficient until 1956, even if all projects now under construction and proposed for construction are constructed and completed on time and probably the said region will not have an ample amount of dependable power supply until 1959 or later.
- (3) In letters dated January 3, 1951 and November 26, 1951, the Defense Electric Power Administration urged the Commission to give early and favorable consideration to the Box Canyon project.
- (4) In the river channel immediately above the proposed Box Canyon dam and for possibly 24 miles upstream, the water level will be higher than under natural conditions for flows up to about 90,000 cubic feet per second due to the operation of the Box Canyon project, but with the same flows, water levels farther upstream will differ little from natural conditions. For flows above 90,000 cubic feet per second, the operation of the project will have little if any effect on water levels. In general, damage to privately owned lands will be small but will have to be compensated for by the licensee where it does occur. On the other hand, the project will provide a substantial block of high load factor power in a relatively short time which is badly needed in the Pacific Northwest at low cost which is necessary for the large power-consuming defense industries.
- (5) The proposed Box Canyon project is a run-of-river type project with limited pondage. The Pend Oreille River at the Box Canyon project site will be regulated by the Hungry Horse reservoir and Flathead Lake and reregulated in Pend Oreille Lake by the Albeni Falls project now under construction by the U. S. Corps of Engineers. The flow passing the Box Canyon project, therefore, will be virtually equal to that released from the Albeni Falls reservoir.
- (6) The Commission's staff has reviewed the report of the Harza Engineering Company on the project which includes extensive back-water studies made in collaboration with the Corps of Engineers. Streamflow studies indicate that the mean annual flood at the project site is on the order of 90,000 cubic feet per second. The flood of June 1948, was measured by the Corps of Engineers and the United States Geological Survey and the peak discharge was determined to be 168,700 c.f.s. at Albeni Falls and 171,300 c.f.s. at "Z" Canyon. Operation of the Box Canyon project contemplates that all spillway gates will be opened when the stream has reached

a flow of 90,000 c.f.s. and natural stream flow conditions will prevail for all flows in excess of this amount. The dam will consist of a deep-gated spillway in the main river channel, adequate in capacity to pass all expected flood flows without reservoir backwater effects.

- (7) The proposed plan of operation for the project contemplates that from about July to mid-September the tentative reservoir operating schedule will result in minimum flooding effects on existing productive wild hay lands and that during the ensuing non-growing winter and early spring months operation involving one foot of backwater effect at Albeni Falls will prevail for flows up to 90,000 c.f.s. Operation during the spring and summer flood period may be available but will be such as not to augment either local flooding within the diked areas or the natural hazards of over-tapping any of the main dikes along the river.
- (8) The applicant proposes to install continuous recorder and station gages at important points in the stream between the Box Canyon dam and Albeni Falls project. In connection with the operation of the reservoir and its relation to flooding in the Calispel Valley, the applicant also proposes to install a continuous recorder gage near the mouth of Calispel Creek at Cusick. These readings will be telemetered to the operating rooms of the Box Canyon powerhouse on a continuous basis. The operation of these gages should provide a reliable means of adhering closely to the proposed operating plan.
- (9) A public hearing was held August 28, 1951 in Cusick, Washington, by the applicant herein, Public Utility District No. 1 of Pend Oreille County, Washington, at which hearing the proposed operating plan for the proposed Box Canyon project and its effects on lands adjoining the river were discussed at length by interested persons.

The Commission, having considered the entire record in this proceeding, including all informal protests and requests for hearing on the application, finds:

- (1) The Pend Oreille River, at least from a point above the applicant's proposed Project No. 2042 to its mouth, is a navigable waterway of the United States, and therefore, construction and operation of the applicant's proposed project will affect the interests of interstate or foreign commerce.
- (2) The applicant is a municipal corporation organized under the laws of the State of Washington and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

- (3) No conflicting application is before the Commission. Public notice has been given.
- (4) The applicant has submitted satisfactory evidence of its financial ability to construct and operate the proposed project.
- (5) Except to the extent that under certain conditions there will be encroachment on the tailwater at the Albeni Falls Project, the proposed project does not affect any Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States itself.
- (6) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes of any withdrawal of public lands nor with the purposes for which the Kaniksu National Forest was created or acquired.
- (7) Under present circumstances and conditions and upon the terms and conditions hereinafter imposed, the project is best adapted to a comprehensive plan for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.
- (8) The installed horsepower capacity of the project hereinafter authorized is 98,000 horsepower, and, except for the period immediately after construction, the applicant proposes to use the power from the project in Pend Oreille County for domestic and industrial purposes. Immediately after construction, the power will be channeled into the defense program, either for aluminum industry or other defense needs, in accordance with the request of Defense Electric Power Administration.
- (9) The amount of annual charges to be paid under the license for the purposes of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands is reasonable as hereinafter fixed and specified.
- (10) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the project, and the proportion of surplus earnings to be paid into and held in amortization reserves, are reasonable as hereinafter specified.
- (11) The exhibits designated and described in paragraphs (a) and (b) above conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

- (A) This license is issued to Public Utility District No. 1 of Pend Oreille County, Newport, Washington, under Section 4(e) of the Act, for a period of 50 years, effective as of February 1, 1952, for the construction, operation, and maintenance of Project No. 2042 affecting navigable waters and lands of the United States, subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.
- (B) This license shall also be subject to the terms and conditions set forth in ~~Form L-6~~ entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States", which terms and conditions, described as Articles 1 through 27, are attached hereto and made a part hereof, except for Article 12, and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall commence construction of the project within one year from the effective date of the license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the project works within two years from beginning of construction;

Article 29. The Licensee shall, prior to beginning of operation of the Albeni Falls power plant, enter into an agreement with the Chief of Engineers, Department of the Army, or his designated representative, to compensate the United States for encroachment on the Albeni Falls Project resulting from the operation of the Box Canyon Project. In the event no satisfactory agreement is concluded by such time, then the Commission shall fix and determine the compensation to be made by the Licensee to the United States for such encroachment after notice and opportunity for a hearing.

Article 30. The United States shall not be liable for claims for any damages resulting from releases from the Albeni Falls Project into the Licensees reservoir.

Article 31. The Licensee shall construct, maintain, and operate such protective devices and comply with such reasonable modification of the project structures and operation in the interest of fish and wildlife resources

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as may be hereafter prescribed by the Federal Power Commission upon the recommendations of the Washington State Department of Game, the United States Forest Service, and the Secretary of the Interior.

Article 32. The Licensee agrees that should the project works be damaged or the power output of the project be reduced by subsequent upstream diversion of the waters of the Pend Oreille and Clark Fork Rivers upstream from the Box Canyon site by the United States in connection with its irrigation and conservation program, then the United States shall have the option, in full settlement of any and all claims by the Licensee, of paying such damages as the Licensee shall then be entitled to receive as a matter of law, or of acquiring the Licensee's project in the manner provided by the Act.

Article 33. The project shall be operated by the Licensee in such a manner as not to interfere with or damage Indian land of the Calispel Indian Reservation, or, in case such damage should occur as a result of the operation of the project, the Indians shall be compensated by the Licensee in the manner and amount as determined by the Secretary of the Interior, after consultation with the Calispel Indian Community Council and the Licensee.

Article 34. The Licensee shall clear all lands in the bottom and margin of the reservoir up to high-water level before it is filled and shall dispose of all temporary structures, unused timber, brush, refuse, and inflammable material resulting from the clearing of the lands or from construction of the project works to the satisfaction of the Commission's authorized representative and after the project is placed in operation all trees along the shores of the reservoir which die shall be removed.

Article 35. At such time as the Commission may direct and to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the Licensee shall install an additional generating unit.

Article 36. The Licensee shall pay to the United States the following annual charges:

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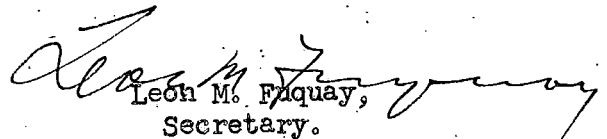
- (i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (98,000 horsepower) plus two and one-half ($2\frac{1}{2}$) cents per 1,000 kilowatt-hours of gross energy generated by the project during each calendar year for which the charge is made;
- (ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be determined by the Commission.

Article 37. The Licensee shall submit, in accordance with the Commission's rules and regulations, Exhibit "L" drawings showing the final design of the proposed spillway structure; and the Licensee shall not begin construction of that dam until the Commission shall have approved the drawings.

Article 38. Within one year from the effective date of this license, the Licensee shall revise and submit for Commission approval Exhibits "F" and "K" in accordance with the Commission's rules and regulations.

- (C) The exhibits designated and described as Exhibits "J", "L", and "M" in paragraphs (a) and (b) above are approved as part of this license.
- (D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided by Section 313 (a) of the Act.
- (E) This license shall be signed for the Licensee and returned to the Commission within 60 days from date of issuance of this order in testimony of its receipt and acceptance.

By the Commission.


Leon M. Fuquay,
Secretary.

Date of Issuance: February 7, 1952

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IN TESTIMONY OF ACCEPTANCE of all the provisions, terms and conditions of this license, Public Utility District No. 1 of Pend Oreille County, Washington, this 11th day of February, 1952, has caused its corporate name to be signed hereto by JOHN M. FOUNTAIN, Chairman of its Board of Directors, and its corporate seal to be affixed hereto and attested by F. W. SCHWAB, its official Secretary, pursuant to a resolution of its Board of Directors duly adopted on the 11th day of February, 1952, a certified copy of the record of which is attached hereto.

PUBLIC UTILITY DISTRICT NO. 1 OF
PEND OREILLE COUNTY, WASHINGTON

By:

John M. Fountain
Chairman

Attest:

F. W. Schwab
Secretary

(Executed in quadruplicate)

FEDERAL POWER COMMISSION

TERMS AND CONDITIONS OF LICENSE
FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING
NAVIGABLE WATERS AND LANDS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the

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[Signature]

license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its

resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 6. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate

rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow for such purposes the construction of access roads, wharves, landings, and

other facilities on its lands the occupancy of which may, in appropriate circumstances, be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities.

Article 8. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 9. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 10. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not

owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 11. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 12. The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste

material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 13. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 14. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on or near lands occupied under the license.

Article 15. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 16. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point

adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 17. The operation of any navigation facilities, which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army. Such rules and regulations may include the construction, maintenance, and operation by the Licensee, at its own expense, of such lights and signals as may be directed by the Secretary of the Army.

Article 18. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of

navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 19. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 20. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 21. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for

the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 22. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road after construction of the project works is completed.

Article 23. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 24. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10 (d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and

one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 25. No lease of the project or part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for such purposes.

Article 26. The Licensee, its successors and assigns will, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area,

the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 27. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Mon C. Wallgren, Chairman; Thomas C. Buchanan and
Commissioners: Nelson Lee Smith.

February 1, 1951

In the Matter of)

Public Utility District No. 1)
of Pend Oreille County, Washington)

Project No. 2042

ORDER ISSUING PRELIMINARY PERMIT

Application was filed on February 6, 1950 by Public Utility District No. 1 of Pend Oreille County, Newport, Washington, for preliminary permit under the Federal Power Act for proposed hydroelectric Project No. 2042, known as the Box Canyon project, to be located on Pend Oreille River (Clark Fork, Columbia River), in Pend Oreille County, Washington, and affecting public lands and lands of the United States within Kaniksu National Forest.

As described in the application, the proposed project would consist of a dam about 45 feet high at the Box Canyon site, north of Ione, Washington, a pool created by the dam extending about 53 miles upstream, a powerhouse with installed capacity of 60,000 kilowatts, and appurtenant facilities.

The Chief of Engineers, Department of the Army, the Secretary of the Interior, the Chief, Forest Service, acting for the Secretary of Agriculture, and the Department of Game, State of Washington, have reported favorably on the application as hereinafter provided.

In letter dated January 3, 1951, the Acting Administrator, Defense Power Administration, has urged the Commission to encourage the development of the Box Canyon site by the applicant and to expedite action on the project.

The proposed project would be located about 53 miles downstream from the Albeni Falls project now under construction by the Corps of Engineers, United States Army, and about 17 miles upstream from the Boundary project considered for future development by the Corps of Engineers or the alternate Z Canyon development proposed by the Department of the Interior.

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Possible conflicts with the upstream Albeni Falls project can be avoided by requiring coordination of the applicant's plans with those of the Corps of Engineers.

The proposed Boundary project or the alternate Z Canyon project would be in definite conflict with the applicant's Box Canyon project in that either of the first two projects, if constructed, would submerge the Box Canyon project. However, the Boundary or Z canyon dams would seriously affect every important lead and zinc mine and mill downstream from the Box Canyon site. Accordingly, construction of these two projects is considered not for the immediate future but are to be deferred until such time as the mines have been sufficiently worked out so as to justify their abandonment.

The Commission, having considered the entire record in this proceeding, including the reports of Federal and State agencies, communications both favorable and unfavorable from interested local groups, commissions, districts, companies and individuals, finds:

- (1) The applicant is a municipal corporation organized and existing under the laws of the State of Washington.
- (2) Public notice of the application has been given. No conflicting application is before the Commission.
- (3) The proposed project will not affect adversely any Government dam, as hereinafter provided for, and no reason is apparent at this time for its development by the United States.

The Commission orders:

- (A) This preliminary permit issued to Public Utility District No. 1 of Pend Oreille County, Washington (hereinafter referred to as the Permittee), for the sole purpose of maintaining priority of application for a license for Project No. 2042 upon the Pend Oreille River (Clark Fork, Columbia River), and upon public lands, and lands of the United States within Kaniksu National Forest, subject to the terms and conditions of the Federal Power Act (hereinafter referred to as the Act), which is hereby incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.
- (B) This permit shall be subject also to the terms and conditions set forth in Form F-1, entitled "Terms and Conditions of Preliminary Permit", which terms and conditions are incorporated herein by reference and made a part hereof; and subject to the following special conditions:

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- (1) The priority granted herein shall be for a period of six months from the date of acceptance of this permit to enable the Permittee to comply with the requirements referred to above or hereinafter stated, necessary for applying for license for the proposed project.
- (2) The Permittee shall cooperate with the Washington Department of Game and with the Department of the Interior's Fish and Wildlife Service in the development of plans for the conservation of the fish and wildlife resources involved.
- (3) The Permittee shall cooperate with the District Engineer, Department of the Army, in the development of its plans and method of operation of the project.
- (4) The Permittee shall submit to the Commission through its Regional Engineer, 100 McAllister Street, Room 1505, San Francisco 2, California, at the expiration of the six-month period of the permit, a report on the progress made in securing data and performing the acts required by Section 9 of the Act and under the permit.
- (5) If the Permittee decides to construct the Box Canyon project, the Permittee shall:
 - (a) File an application for license therefor within six months from the date of issuance of this permit.
 - (b) Complete the project within two years after issuance of the license.
 - (c) Coordinate the operation of the project with the Pacific Northwest Power Pool.
- (6) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed within the 30-day period provided by Section 313(a) of the Act.
- (7) The permit shall be accepted and returned to the Commission within 60 days from date of issuance of this order.

By the Commission.

Leon M. Fuquay,
Secretary.

Date of Issuance: February 2, 1951

Project No. 2042
(Cont'd)

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IN TESTIMONY OF ACCEPTANCE of all the provisions, terms, and conditions of the foregoing preliminary permit, the Permittee, this _____ day of _____, 1951, has caused its corporate name to be signed hereto by _____, _____ Chairman of its Board of Directors, and its corporate seal to be affixed hereto and attested by _____, its _____ Secretary, pursuant to a resolution of its Board of Directors adopted on the _____ day of _____, 1951, a certified copy of the record of which is attached hereto.

PUBLIC UTILITY DISTRICT NO. 1 OF
PEND OREILLE COUNTY, WASHINGTON

By _____

Chairman

Attest:

Secretary

(Executed in quadruplicate)