

1 FEDERAL ENERGY REGULATORY COMMISSION
2 KLAMATH AND LOWER KLAMATH
3 HYDROELECTRIC PROJECTS

4

5 DOCKET NOS: P-2082-062/P-14803-000

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8 TRIBAL CONSULTATION MEETING

9 TELECONFERENCE

10

11 Monday, February 5, 2018

12 11:00 A.M.

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1 PARTICIPANTS

2 FERC STAFF

3 ELIZABETH M. MOLLOY, TRIBAL LIAISON

4 JENNIFER POLARDINO, HISTORIAN

5 FRANK WINCHELL, ANTHROPOLOGIST/ARCHAEOLOGIST

6 ELIZABETH MCCORMICK, ATTORNEY-ADVISOR

7 MODOC TRIBE

8 CHIEF BILL G. FOLLIS, CHIEF AND TRIBAL ADMINISTRATOR

9 JUDY COBB, CHIEF

10 ROB BURKYBIKE III, HOUSING & ENERGY DIRECTOR

11 W. BLAKE FOLLIS, ENVIRONMENTAL DIRECTOR AND TRIBAL ATTORNEY

12 MARISSA FAHRING, TRIBAL BUSINESS REPRESENTATIVE

13 TROY LITTLEAXE, ASSISTANT TRIBAL ADMINISTRATOR AND ATTORNEY

14 DAVE MEURER, COMMUNITY LIAISON

15 KEVIN TAKEI, OFFICE OF GENERAL COUNSEL

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18 THOMAS P. SCHLOSSER, COUNSEL FOR HOOPA VALLEY TRIBE

19 JOHN HAMILTON, COMMUNITY MEMBER

20 JEFF MORRIS

21 HOLLY DILLEMUTH, HERALD AND NEWS

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1 P R O C E E D I N G S

2 (11:00 a.m.)

3 MS. POLARDINO: So first off, before we begin, I
4 kind of wanted to make sure that we kind of know who's
5 attending the meeting. So first off, I will kind of go
6 through the attendance sheet that I have and if there's
7 anybody here who is not on this sheet please let me know.

8 And after the meeting what we can do is you can
9 email me to verify all of the information that you have --
10 for example, the spelling of your name, the entity that you
11 represent, et cetera. And you can email me at Jennifer -
12 J-e-n-n-i-f-e-r dot Polardino which is P-o-l-a-r-d-i-n-o @
13 FERC.gov -- because I understand sometimes people get the
14 call-in information from other people or what not.

15 So first off, do we have Chief Bill G. Follis of
16 the Modoc Tribe on the phone?

17 CHIEF FOLLIS: Yes, he's here.

18 MS. POLARDINO: Okay, do we have Judy Cobb from
19 the Modoc Tribe?

20 CHIEF FOLLIS: Judy will not be here this
21 morning.

22 MS. POLARDINO: Okay, do we have Rob Burkybike,
23 III from the Modoc Tribe?

24 MR. BURKYBIKE, III: Yes, I'm here.

25 MS. POLARDINO: Okay, do we have W. Blake Follis

1 from the Modoc Tribe?

2 MR. FOLLIS: Yes, I'm here Jen.

3 MS. POLARDINO: Thank you, do we have Marissa
4 Fahring from the Modoc Tribe?

5 CHIEF FOLLIS: Marissa will be in shortly.

6 MS. POLARDINO: Okay, do we have Troy LittleAxe
7 from the Modoc Tribe?

8 MR. LITTLEAXE: Yes, I'm here.

9 MS. POLARDINO: Okay, do we have any other
10 members or representatives from the Modoc Tribe on the phone
11 today?

12 CHIEF FOLLIS: No, we do not have any from our
13 office and should any come in we'll be happy to announce
14 them.

15 MS. POLARDINO: Okay, great -- that'd be great.

16 MS. POLARDINO: Do we have Dave Meurer from the
17 Klamath River Renewal Corporation on the phone?

18 (No response.)

19 MS. POLARDINO: Okay. Do we have Kevin Takei -- I
20 apologize if I'm mispronouncing anybody's last name -- from
21 the California Department of Fish and Wildlife on the phone?

22 (No response.)

23 MS. POLARDINO: Do we have Joshua Adrian from Duncan,
24 Weinberg?

25 MR. ADRIAN: Yes, I'm here.

1 MS. POLARDINO: Okay, do we have Diane Henkels
2 from Henkels Law, LLC?

3 (No response.)

4 MS. POLARDINO: Okay, do we have Thomas Schlosser?

5 MR. SCHLOSSER: Yes.

6 MS. POLARDINO: Okay, do we have John Hamilton on
7 the phone?

8 MR. HAMILTON: Yes we do. I'm a member of the
9 general public. I assume that's okay to attend.

10 MS. POLARDINO: Yes, yes. Do we have Jeff Morris
11 on the phone?

12 (No response.)

13 MS. POLARDINO: Okay, do we have Elizabeth Nielsen
14 from the County of Siskiyou -- I apologize?

15 MS. NIELSEN: Yes, you do.

16 MS. POLARDINO: Okay, yes. Do we have Natalie
17 Reed from the County of Siskiyou?

18 MS. NIELSEN: She may be calling in a little bit
19 later.

20 MS. POLARDINO: Okay, do we have Holly Dillemath
21 from the Herald and News on the phone?

22 (No response.)

23 MS. POLARDINO: Okay, are there any other people on
24 the phone that I haven't called out their names?

25 (No response.)

1 MS. POLARDINO: Okay -- so hello?

2 (No response.)

3 MS. POLARDINO: Okay, so for the members of the
4 public if you would not mind muting the phones so we won't
5 have a lot of extra static on the teleconference call.
6 Also, since we're having a teleconference call anytime
7 anybody would speak if you wouldn't mind re-identifying
8 yourself whenever you're on the phone and what not.

9 My name is Jennifer Polardino. I'm a Historian
10 from the Division of Hydropower Administration and
11 Compliance and with the Office of Energy Projects and I'm
12 going to go around the tables to identify other FERC staff
13 members who are here.

14 MS. MCCORMICK: Hi, I'm Elizabeth McCormick. I'm
15 in the Office of the General Counsel here at the Commission.

16 MS. MOLLOY: I'm Liz Molloy, I'm the Tribal
17 Liaison here at the Commission and I'm also from the Office
18 of the General Counsel.

19 MR. WINCHELL: Hi, I'm Frank Winchell. I'm an
20 Archeologist with the Office of Energy Projects Division of
21 Hydropower Licensing at FERC.

22 MS. POLARDINO: Okay so first off, we have an
23 agenda I sent out to the Modoc Tribe. Do you have an
24 opening statement?

25 CHIEF FOLLIS: I think our opening statement is

1 rather simple. We're happy you all can be here today and
2 happy for the opportunity to have this call. And I also
3 wanted to let you know Jennifer, that Marissa did just walk
4 in.

5 MS. POLARDINO: Great.

6 CHIEF FOLLIS: Do you want to say hi Marissa?

7 MS. FAHRING: Hello.

8 MS. POLARDINO: That's Marissa Fahrung, and again
9 if you guys wouldn't mind re-identifying. We have a court
10 reporter who's transcribing the meeting -- that's the reason
11 why we were asking everybody to re-identify themselves so
12 when we are doing the transcript we would have an idea who
13 actually was speaking.

14 CHIEF FOLLIS: Okay.

15 MS. POLARDINO: Just first some ground rules for
16 the public. I think I kind of have already stated this --
17 this is a meeting between the Commission staff and the Modoc
18 Tribe to see any concerns or what not they have with regards
19 to their proposals for the Klamath and Lower Klamath
20 Projects.

21 The general public is able to attend this meeting
22 but this meeting will not be for public comments so we'll
23 kind of maybe turn this over to Elizabeth.

24 MS. MCCORMICK: Sure, I'll just -- this is Liz
25 McCormick again. Thanks everyone for being on the call

1 today. I'll just give a little background of the proceeding
2 up to this point. I'm kind of -- our goals for the call
3 today. So I think as most of you know, we have received an
4 application from the Klamath River Renewal Corporation and
5 PacifiCorp.

6 We have two applications in front of us. One is
7 for an amendment of the existing license and to transfer it
8 to the Renewal Corporation -- four dams that PacifiCorp
9 would like to transfer to the Renewal Corporation and then
10 they would amend their existing license to remove those four
11 dams from the project.

12 And then there would be a new license issued to
13 the Renewal Corporation for those lower four dams. The
14 second application is for a surrender of those lower four
15 dams by the Renewal Corporation.

16 And so we do have two separate proceedings before
17 us which can get a little bit confusing but they're very
18 closely related and so the purpose of doing them separately
19 is because it's kind of a unique situation where one entity
20 is transferring dams to another entity for the explicit
21 purpose of removing those dams from the river.

22 So they're very closely related but there's a lot
23 of information that is pertinent to both proceedings.
24 Anything else that you can think of -- so yeah, so as far as
25 our process goes we have these applications before us.

1 We anticipate acting on the application for
2 amendment and transfer first and then once we've made a
3 decision on that application then we will be able to move
4 forward with considering the application for surrender.

5 So the amendment and transfer proceeding is more
6 of an administrative proceeding -- there's no physical
7 change proposed in that application. It's a purely legal
8 and administrative proceeding.

9 When we eventually get to the point where we --
10 if we decide to consider the application for surrender that
11 proceeding will involve the full environmental analysis and
12 also the cultural resources, historic properties -- all that
13 kind of stuff that is really into the physical removal of
14 the dams from the river.

15 So the transfer and amendment is purely an
16 administrative proceeding.

17 MS. POLARDINO: And anything that got transferred
18 over would have the same terms and conditions -- this is
19 Jennifer Polardino. Anything that would be from the four
20 projects would be transferred over and have the same terms
21 and conditions for the new license.

22 MR. FOLLIS: Jennifer and Liz, this is Blake
23 Follis from the Modoc Tribe. My question is -- is that
24 nothing has been done as far as cultural resource studies or
25 environmental studies at this point, is that correct?

1 MR. WINCHELL: Yeah, this is Frank Winchell
2 speaking. Yeah like -- okay there has been quite a bit of
3 background work done that was conducted during the previous
4 relicensing as well as there's been some more recent work
5 done when the Department of Interior issued their final
6 environmental impact statement back in 2012.

7 So there is quite a bit of cultural resources
8 information that we already have before us that's on record.

9 MR. FOLLIS: Okay Frank, this is Blake again --
10 and how much of that has included our tribe?

11 MR. WINCHELL: Good question. I don't think
12 we've got a whole great deal of information. We certainly
13 -- we have the contextual information about the Modoc
14 historically, but as far as recent information -- like let's
15 say the perspective from the tribe, we would by all means
16 welcome any additional information that you may have that
17 can be provided on the record for us to use as part of our
18 environmental analysis for the Klamath.

19 MR. FOLLIS: Frank, this is Blake again, so my
20 understanding of the cultural resource studies that have
21 been conducted that's everything on the surface as of today,
22 correct?

23 MR. WINCHELL: Yeah, now when you say surface --
24 you know there's quite a bit of a comprehensive
25 archeological surveys done. I think there was some

1 sub-surface testing of some particular sites.

2 Of course there's a lot of traditional cultural
3 resources information that was provided as well.

4 MR. FOLLIS: So let me re-define that in line
5 with that. When I say surface I'm discussing areas not
6 currently covered by water.

7 MR. WINCHELL: Yeah, I think we pretty much have
8 most of the surface area that's been intensively inventoried
9 involving the Lower Klamath Project.

10 MR. FOLLIS: So with that said there's nothing
11 underneath the existing reservoirs right now to think about?

12 MR. WINCHELL: Correct. Now of course we are
13 aware that there is stuff that's inundated since the
14 reservoirs have been put in place over the last hundred
15 years or so, so we are definitely aware that there would be
16 resources that would probably be exposed to some degree if
17 and when the dams would be removed.

18 MR. FOLLIS: Okay. And then moving towards a
19 little bit of the environment -- again this is Blake Follis
20 -- the environmental side, you know, how much as far as
21 mitigation efforts and remedial efforts have been taken into
22 account with this study?

23 From my research of just briefly looking through
24 the filings that have been made, I'd say those were rather
25 voluminous but volume doesn't always mean that something has

1 been addressed directly.

2 So I'm looking in terms of what type of sediment
3 mitigation is being accounted for prior to the consideration
4 of the dam removal and then post-dam removal what type of
5 sedimentation mediation and mitigation aspects will be done?

6 MR. WINCHELL: Right. The corporation has
7 provided what they call the "detailed plan" and that's going
8 to be followed up with sort of the finalization of the
9 detailed plan. There's quite a bit of information about
10 the, the -- what kinds of sediments are behind the dam.

11 They have done some coring so they do -- you
12 know, they do have some empirical data about the sediments
13 and there's been some work on what would happen once the
14 sediments got removed.

15 So I would definitely recommend that the Tribe
16 look at that information in the detailed plan and then of
17 course the corporation is going to be filing their final
18 finalization of the detailed plan which would also be
19 available on the record fairly soon.

20 MR. FOLLIS: Okay, okay and that would also --
21 again this is Blake Follis. That will also address
22 different types of fish habitat impacts?

23 MR. WINCHELL: Yeah.

24 MR. FOLLIS: Species impacts, different types
25 that would otherwise be considered under an ESA -- or EIS?

1 MR. WINCHELL: Correct, correct. And that
2 information is also -- again we've got two NEPA analyses.
3 The one I would start off with would be the FERC final
4 environmental impact statement which was done back in 2008.
5 That's a very comprehensive analysis on the existing and
6 anadromous fish and the impacts are such also riparian
7 impacts along the shoreline with terrestrial resources.

8 And then of course we've got the more recent
9 analysis on involving the final environmental impact
10 statement that was done by the Department of Interior back
11 in 2012. And again, these are very comprehensive
12 environmental analyses. They have a lot of this
13 information -- if not everything, that we need to go forward
14 with an analysis on a surrender of the projects and
15 subsequent dam removal.

16 MR. FOLLIS: Okay and I'm -- in here I'm briefly
17 assuming but that would also take into account the impact on
18 the water table itself for the river?

19 MR. WINCHELL: Yes.

20 MR. FOLLIS: Okay and all of the hydrology
21 studies have been included on that as well?

22 MR. WINCHELL: As far as we know, yes.

23 MR. FOLLIS: Okay -- other aspects that I'm
24 looking at -- what's the basis of filing this application
25 with the KRRC and PacifiCorp? What's the foundational

1 reasoning for that?

2 MR. WINCHELL: Well I believe again -- they want
3 to transfer the jurisdiction from PacifiCorp specifically to
4 essentially the corporation is made up of the states of
5 California and the state of -- or the state of California
6 and Oregon. They're the principals of the corporation along
7 with involved Indian Tribes and some other entities.

8 So it's essentially a jurisdictional transference
9 of the authority from PacifiCorp which is a private entity
10 to the states of California and Oregon who also have the
11 water quality certification authority as well.

12 MR. FOLLIS: Frank, this is Blake, you mentioned
13 tribes and of the tribes that are included on that --

14 MR. WINCHELL: Right.

15 MR. FOLLIS: We are not and I'm kind of wondering
16 as far as the elephant in the room as to why we are not
17 included on that as being involved with the KRRC in that
18 type of -- any type of settlement agreement as it applies to
19 the river considering the fact that the four dams in
20 question here are well within our ancestral territory.

21 MR. WINCHELL: Right.

22 MR. FOLLIS: And the water rights that are going
23 to be impacted according to, you know, our 1864 Treaty and
24 then pre-dating it ancestral files.

25 MR. WINCHELL: Right.

1 MR. FOLLIS: Why we have not been consulted is an
2 area of concern for us.

3 MR. WINCHELL: Well again Blake, you are
4 certainly -- and we recognize you as a federally recognized
5 tribe and that you are indeed involved with this -- these
6 procedures that are before us.

7 In the past I can only say that there were, you
8 know, attempts to involve the tribes way back over a decade
9 ago. Why that didn't occur I'd have to look into the record
10 but I think that's literally, you know, water underneath the
11 bridge and hence forward you are certainly involved.

12 MS. MOLLOY: This is Liz Molloy. Certainly from
13 our proceeding we certainly encourage you to file comments.
14 We certainly will take those comments into account and we
15 will consider your views in analyzing the application and
16 going towards making the decision on both the applications.

17 But as to why the corporation -- the corporation
18 is not us, it is an applicant and so any questions about
19 whether -- why they would not have included you or why --
20 whether or not they would be interested in having you
21 participate now in their corporation would be a question for
22 them as an applicant.

23 That wouldn't be us. We will be analyzing the
24 applications and making a decision based on that but they
25 are the ones applying.

1 MR. WINCHELL: Yeah.

2 MR. FOLLIS: Thank you for that Liz, I appreciate
3 it. I do have another question -- again this is Blake
4 Follis. What's going to be the impact of, you know, fire
5 safety? As I understand it those reservoirs right now are
6 used for fire-fighting efforts and if you remove a large
7 body and volume of water away from, you know, basically
8 you're removing that resource. What will be the impact on
9 that?

10 MS. POLARDINO: We will be analyzing that Blake.

11 MS. MCCORMICK: Yeah that is something that we'll
12 be looking at as part of the application for surrender and
13 so we're still waiting for some additional information from
14 applicants before we can fully analyze that application --
15 but that's definitely something that we've received comments
16 on and we are going to be analyzing.

17 MR. FOLLIS: That's awesome. One more question
18 -- who carries the liability during the removal of the dams
19 and then once the dams are removed? As I understand it the
20 KRRC is a 501C3 and typically non-profits don't carry much
21 liability outside of their assets.

22 So what's, you know, either personal or I guess
23 it's going to really end up coming down to personal
24 liability. What's the impact for an individual who may be
25 harmed -- what do they do as far as finding a remedy?

1 MS. MCCORMICK: So we are still waiting on
2 additional information regarding insurance and risk
3 mitigation as part of the application for surrender. From
4 what the Renewal Corporation has told us, they have kind of
5 a general business kind of insurance policy and then they
6 will also have more project-specific policies.

7 And so we're waiting on additional information
8 but that's definitely something that we're looking at very
9 closely and we're anticipating that we should be getting
10 that information with the definite plan that Frank was
11 talking about hopefully in the next few months.

12 MR. FOLLIS: Okay, yeah because I think it would
13 be a very intelligent move on their part to have a long-term
14 insurance policy based on the effect of this removal.

15 MS. MCCORMICK: Yes, absolutely and to your
16 question earlier about who exactly will be liable and when
17 -- PacifiCorp has agreed to continue operating the dams up
18 until decommissioning begins, if and when that does happen.

19 And then from the beginning of decommissioning
20 on, it will be the Renewal Corporation alone -- it will be
21 the full entity responsible.

22 MR. FOLLIS: Okay, what will be the economic
23 impacts that take place? I've read a little bit of the
24 charge issue -- rate users right now for electric -- the
25 argument is that it will be minimal but I find that a little

1 bit hard to believe when you don't have power coming in to
2 be distributed.

3 I see that as kind of a great opportunity to
4 raise prices because you have a lower amount of supply.

5 MR. WINCHELL: Well, we're going to do some --
6 you know, the economic analysis was going to be part of our
7 NEPA analysis on the surrender so a lot of that information
8 would be -- we would be looking into it and that would be
9 part of our analysis.

10 There is something that you know,
11 jurisdictionally wise, you know, the Commission isn't
12 involved with let's say -- in-state retail and so there may
13 be things that would be outside of our jurisdiction as part
14 of regulating electric prices as such but we certainly would
15 -- that would be part of our analysis on the effects of a, a
16 decommissioning removal of the dams on the local economy and
17 things as such.

18 MR. FOLLIS: Okay well I think for my part I'll
19 allow for the rest of the Tribal members who are present to
20 speak if they have any questions or concerns, so far I'm
21 getting a bunch of no's.

22 MR. WINCHELL: Okay this is Frank again. I just
23 wanted to add that the -- the project coordinator for this
24 surrender his name is Dr. John Mudre. He is a Fisheries
25 Biologist, he was also the coordinator for the analysis that

1 we did on the original relicensing so again you're welcome
2 to contact any of this today but I just wanted to make it
3 clear that John Mudre is going to be the Project Coordinator
4 for the surrender process.

5 MR. FOLLIS: Frank, this is Blake again, I'd
6 appreciate it if you all worked through Jennifer to send me
7 the appropriate contact information and --

8 MS. POLARDINO: Blake, this is Jennifer, I was
9 planning on doing so, so yes, absolutely.

10 MR. FOLLIS: Yeah because I, you know, it's kind
11 of rough coming in late in the game, so to speak, how
12 everything is working out but we still definitely want to
13 have a place on this project.

14 MR. WINCHELL: Sure.

15 MR. FOLLIS: And work with everybody within the
16 community that we've been very well opened and obvious with
17 making investments in the area and then also insuring that
18 everybody benefits from decisions that we have the
19 opportunity to have an impact on.

20 MS. MOLLOY: One -- this is Liz Molloy, one thing
21 I'd like to clarify is due to our quasi-judicial role where
22 we're making a decision on an application and there is both
23 support and opposition on various aspects of this -- this is
24 a contested proceeding and therefore our -- the Commission's
25 ex parte rules apply.

1 So that's one reason -- that's why we're having
2 this -- a court reporter report on this, do a transcript of
3 this meeting and all the other tribal meetings. But so,
4 while we can answer procedural questions we actually need to
5 have comments and concerns raised on the record.

6 So we certainly will be on the surrender when we
7 get the additional information. We will be issuing a notice
8 asking for comments and we certainly welcome any comments
9 that you all would have. And if there are any comments that
10 you would be filing or interested in making that would be
11 privileged that you would want confidential, we do have
12 privileged filing methods that would keep it more sheltered,
13 the information.

14 MR. WINCHELL: Yeah, and this is Frank just
15 following up on what Liz is saying is that of course,
16 anything that's procedural -- like if there was a filing of
17 confidential information as such we would certainly be able
18 to help you understand that and we can do that by telephone.

19 But anything involving the merits of the project
20 we can't talk about because of our off the record
21 communication prohibitions involving a contested proceeding.
22 That would have to be put on the record, but anything that's
23 procedural we certainly can walk you through these kinds of
24 things.

25 MR. FOLLIS: I appreciate that very much Frank

1 and Liz and as it kind of stands right now I think we're a
2 little bit near the issues as well and it would be premature
3 of us to support this without further involvement of the
4 Tribe going forward and we appreciate you all providing an
5 opportunity for the call today and we really look forward to
6 working with you all in the future.

7 MS. MOLLOY: In the -- one other thing I would
8 notice -- this is Liz Molloy again, one thing I would
9 mention is that the applicant -- the Klamath Renewal
10 Corporation -- in the notice that we issued of the
11 applications filed, we issued a notice in November, 2016 --
12 I believe they were designated non-federal representatives
13 for 106 -- Section 106 National Historic Preservation Act
14 and for ESA.

15 So to the extent they reach out and ask for any
16 information you might have or might be willing to share with
17 them we encourage you to work with them to help make sure
18 their application and additional information they filed with
19 us is as complete and accurate as possible.

20 MR. FOLLIS: So let me understand -- they are
21 authorized to reach out to tribes?

22 MS. MOLLOY: They are.

23 MR. FOLLIS: Okay, okay thank you. Okay, does
24 anybody else -- Chief do you have anything? Okay, well
25 again thank you all for your time. We appreciate it and if

1 we have any other opportunities to visit with you we'll be
2 happy to do so.

3 MR. WINCHELL: Great.

4 MS. POLARDINO: Yes, and just to remind you guys
5 on the phone, everybody outside, this meeting will be
6 transcribed and will be on the record at least 30 days after
7 this meeting.

8 And if there are any additional comments as both
9 Frank and Liz have made clear, if there are any additional
10 comments you want to make for the record you can file it on
11 our e-library system and if you have any issues for filing
12 anything, contact anybody here that you're talking to today.

13 And we thank you for your time and your comments
14 and your questions.

15 MS. MOLLOY: Thank you.

16 MR. FOLLIS: Thank you all as well.

17 (Whereupon the meeting was adjourned at 11:31 a.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 This is to certify that the attached proceeding
4 before the FEDERAL ENERGY REGULATORY COMMISSION in the
5 Matter of:

6 Name of Proceeding:

7 KLAMATH AND LOWER KLAMATH

8 HYDROELECTRIC PROJECTS

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16 Docket No.: P-2082-062/P-14803-000

17 Place: Washington, D.C.

18 Date: Monday, February 5, 2018

19 were held as herein appears, and that this is the original
20 transcript thereof for the file of the Federal Energy
21 Regulatory Commission, and is a full correct transcription
22 of the proceedings.

23

24 Gaynell Catherine

25 Official Reporter