



A LIMITED LIABILITY PARTNERSHIP  
Millennium Tower  
729 Second Avenue  
Suite 1150  
Seattle, WA 98104  
(206) 623-9372 Phone  
(206) 623-4986 Fax

**Matthew A. Love**  
(206) 829-1809  
[mal@vnf.com](mailto:mal@vnf.com)

December 21, 2012

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Kerr Project, FERC Project No. 5, FERC Docket No. EL12-62;  
CSKT's Demand for Arbitration**

Dear Secretary Bose:

Enclosed for electronic filing with the Federal Energy Regulatory Commission is the Confederated Salish and Kootenai Tribes of the Flathead Reservation's Demand for Arbitration before the American Arbitration Association regarding the dispute of PPL Montana's September 4, 2012 updated Estimate of the "Conveyance Price" for the Kerr Project, FERC Project No. 5.

If you have any questions on the notice of dispute, please contact me at (206) 829-1809 or [mal@vnf.com](mailto:mal@vnf.com).

Respectfully submitted,

/s/ Matthew A. Love  
Matthew A. Love

Counsel for the Confederated Salish and Kootenai  
Tribes of the Flathead Reservation

Enclosure



ATTORNEYS AT LAW

SEATTLE, WA • WASHINGTON, DC

Millennium Tower  
719 Second Avenue Suite 1150  
Seattle, Washington 98104  
206-623-9372 P  
206-623-4986 F

December 21, 2012

American Arbitration Association  
Case Filing Services  
1101 Laurel Oak Road, Suite 100  
Voorhees, NJ 08043

**RE: Demand for Arbitration**

Dear American Arbitration Association (AAA):

On behalf of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”), please accept the following Demand for Arbitration (“Demand”) and the attached Exhibits in support thereof.

This Demand is filed as the result of an unresolved dispute with PPL Montana, LLC (“PPLM”) concerning the “Estimated Conveyance Price” for the Kerr Hydroelectric Project, Federal Energy Regulatory Commission (“FERC” or “Commission”) Project No. 5 (“Kerr Project”). The Kerr Project is a hydroelectric project located on the Flathead River in Montana; within its boundaries are lands that are part of the Flathead Reservation, which is the treaty-reserved homeland of CSKT.

CSKT is submitting this Demand pursuant to the FERC License for the Kerr Project. *See Mont. Power Co.*, 32 FERC ¶ 61,070 (1985). The dispute between CSKT and PPLM involves the application of the Kerr Project license provisions governing the estimation of the price, described in the License as the “Conveyance Price,” at which CSKT will purchase the Kerr Project from PPLM.

The License provides that the Board of Arbitration (“Board”) “shall estimate the Conveyance Price” by no later than March 5, 2014. To ensure that this deadline for a final decision is met, CSKT requests that AAA expedite the processing and scheduling of the arbitration proceeding.

Based upon PPLM’s request for an extension, the parties have conferred and agreed that PPLM’s answering statement is due on January 18, 2013.

Additionally, the parties have chosen January 18, 2013 as the deadline for simultaneous disclosure of their party-appointed arbitrators to each other, on that date, pursuant to the FERC License terms.

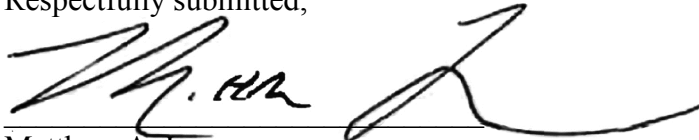
American Arbitration  
Association

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December 21, 2012

If you have any questions or need additional information, please do not hesitate to contact the counsel listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Love', written over a horizontal line.

Matthew A. Love  
Van Ness Feldman, LLP  
719 Second Avenue  
Suite 1150  
Seattle, WA 98104  
Tel: (206) 623-9372  
Fax: (206) 623-4986  
[mal@vnf.com](mailto:mal@vnf.com)

Counsel for the Confederated Salish  
and Kootenai Tribes of the Flathead Reservation

Cc: Joe Hovenkotter  
David Poe  
David Kinnard

**AMERICAN ARBITRATION ASSOCIATION**

**In the Matter of Arbitration between** )  
 )  
 Confederated Salish and )  
 Kootenai Tribes )  
 of the Flathead Reservation, )  
 )  
Claimant, )  
 )  
 and )  
 )  
 PPL Montana, LLC, )  
 )  
Respondent. )  
 )

**DEMAND FOR ARBITRATION**

AAA No.: \_\_\_\_\_

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**STATEMENT OF CLAIM AND DEMAND FOR ARBITRATION**

This **DEMAND FOR ARBITRATION** is filed on behalf of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT” or “Claimant”), by their counsel, as the result of an unresolved dispute with PPL Montana, LLC (“PPLM” or “Respondent”) concerning the “Estimated Conveyance Price” (see *infra* ¶¶ 1-7) for the Kerr Hydroelectric Project, Federal Energy Regulatory Commission (“FERC” or “Commission”) Project No. 5 (“Kerr Project”). The FERC license for the Kerr Project requires that the Board of Arbitration (“Board”) issue a final decision, establishing the Conveyance Price, by no later than March 5, 2014.

Claimants respectfully allege the following:

**I. INTRODUCTION**

1. The dispute between CSKT and PPLM involves the application of FERC license provisions for the Kerr Project that govern the estimation of the price, described as the “Conveyance Price,” at which CSKT will purchase the Kerr Project from PPLM. The Kerr

Project is a hydroelectric generation project located on Flathead Lake and the Flathead River in Montana; within its boundaries are lands that are part of the Flathead Reservation, which is the treaty-reserved homeland of CSKT. On July 17, 1985, the Commission issued the current license (“License”) for a 50-year term to the Montana Power Company (“MPC”), PPLM’s predecessor-in-interest, and CSKT (“Licensing Order”). *Mont. Power Co.*, 32 FERC ¶ 61,070 (1985). The Licensing Order was the result of a settlement (“1985 Settlement Agreement”), in a contested relicensing proceeding in which CSKT and MPC were competing to become the licensee for the Kerr Project for a second license term after the conclusion of the initial 50-year license term. The Licensing Order, reflecting settlement provisions, specified that after a term of years the Kerr Project could be transferred to full CSKT ownership; effectively splitting the second license term between the two competitors. On December 17, 1999, MPC sold its interests in the Kerr Project to PPLM. The Kerr Project is now owned and operated by PPLM, and CSKT is a co-licensee.

2. Under the terms of the License, on at least one year’s written notice, CSKT has the unilateral and exclusive right to purchase the Kerr Project no earlier than the 30<sup>th</sup> anniversary of the effective date of the License (September 5, 2015) and no later than the 40<sup>th</sup> anniversary of the effective date (September 5, 2025). CSKT intends to purchase the Kerr Project on September 5, 2015.

3. In anticipation of the future conveyance, the License required PPLM to: (1) provide CSKT with an Estimated Conveyance Price by September 5, 2010 (“September 2010 Estimate”); and (2) provide CSKT with an updated Estimated Conveyance Price by September 5, 2012 (“PPLM Estimate”).

4. PPLM has provided CSKT with both the September 2010 Estimate and the PPLM Estimate. However, the parties have a significant disagreement about what costs should and should not be included in the Conveyance Price, and the way such costs were and are to be calculated.

5. PPLM's Estimate includes alleged costs which: (1) the FERC License does not contemplate the inclusion of, in the Conveyance Price; (2) do not comply with the License's required accounting method; (3) have not been actually incurred by PPLM or MPC; (4) have not been adequately documented by PPLM; or (5) have been improperly depreciated. None of these five cost items may be included in the Estimated Conveyance Price.

6. Under the License's terms, if CSKT disputes the PPLM Estimate, CSKT must give notice of the dispute within 60 days of receiving the PPLM Estimate. CSKT gave such notice to PPLM on October 16, 2012, within 60 days of receiving the PPLM Estimate. The License also instructs the parties to engage in negotiation, which if unsuccessful, leads to an expedited arbitration process that includes binding arbitration before the American Arbitration Association ("AAA"). The required negotiation process has occurred, concluding on December 17, 2012, but has not resolved the parties' dispute over the Conveyance Price.

7. The subject of this Demand for Arbitration is the Board's determination of the appropriate Estimated Conveyance Price, which differs from the Conveyance Price. The actual Conveyance Price will be established after the conveyance of the Kerr Project to CSKT in 2015. The actual Conveyance Price differs from the Estimated Conveyance Price based upon specific factors such as new capital investment or additional depreciation that arise between the time the Estimated Conveyance Price is established and the date when the Kerr Project is actually conveyed to CSKT in 2015.

## II. PARTIES TO THE DISPUTE

8. CSKT is a federally-recognized Indian Tribe. CSKT is comprised of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes. Its headquarters is located in Pablo, Montana. Those Tribes memorialized their sovereign status and the fundamental nature of their government-to-government relationship with the United States by signing the Hellgate Treaty on July 16, 1855. By the terms of the Hellgate Treaty, those Tribes agreed to cede vast areas of their aboriginal territory to the United States. In return, the United States guaranteed, *inter alia*, that CSKT could continue their traditional way of life. To effectuate this guarantee, CSKT retained exclusive possession of the Flathead Reservation as their delineated homeland and retained express rights to access, protect, and use fish, wildlife, and other resources throughout their aboriginal territory. The Kerr Project is located within the CSKT's treaty-reserved Flathead Reservation.

9. PPLM is a privately held limited liability company organized under the laws of the state of Delaware. It is a subsidiary, wholly owned by the PPL Corporation, an international, investor-owned electric utility corporation headquartered in Allentown, Pennsylvania. PPLM owns and operates both coal-fired and hydroelectric power plants throughout the state of Montana. PPLM acquired the Kerr Project from MPC in 1999, with full knowledge that it would act as a co-licensee with CSKT until the time when the License allowed CSKT to purchase the Kerr Project from PPLM.

10. Claimants and Respondent Contact Information is the following:

The Claimants:

Mr. Joe Durglo  
Tribal Council Chairman  
The Confederated Salish and Kootenai Tribes of the Flathead Nation  
P.O. Box 278 / 51383 U.S. Highway 93 North  
Pablo, MT 59855  
Phone: (406) 675-2700  
Fax: (406) 675-2806  
Email: jdurglo@cskt.org

The Respondent:

David B. Kinnard, Esq.  
Associate General Counsel  
PPL Montana, LLC  
303 North Broadway, Suite 400  
Billings, MT 59101  
Phone: (406) 237-6903  
Email: dbkinnard@pplweb.com

**III. AGREEMENT TO ARBITRATE THE DISPUTE BEFORE THE AAA**

11. According to the License, if the parties cannot agree to the Estimated Conveyance Price, they have 60 days to negotiate with respect to it. If the parties are unable to negotiate a resolution, then the License instructs the parties to submit their dispute to final and binding arbitration. Licensing Order at ordering para. (C)(3)(a). The parties have conducted negotiations for the prescribed 60-day period, but have been unable to resolve their dispute regarding the Estimate Conveyance Price.

12. The Licensing Order, at Ordering Paragraphs (C)(3)(a) and (e), establish how arbitration will take place, as follows:

[a] 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 30<sup>th</sup> 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 28<sup>th</sup> anniversary of the Effective Date.

...

[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 proceeding shall, to the extent possible, be brought in Federal court.

13. The Licensing Order, at Ordering Paragraph (C)(3)(a), stipulates that the Board must issue the Estimated Conveyance Price decision, no later than March 5, 2014.

#### **IV. JURISDICTION**

14. The AAA has jurisdiction over this dispute, because, in the event of a dispute over the Estimated Conveyance Price, the License requires CSKT and PPLM to arbitrate in accordance with the AAA Rules. According to the AAA Rules, the Board will have the “power to rule on [its] own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.”

#### **V. HEARING LOCALE**

15. Claimants respectfully request that the hearing locale be located in Polson, Montana, the location of the Kerr Project, or another agreed upon locale in Western Montana, for the ease and convenience of both parties.

#### **VI. AMOUNT INVOLVED**

16. Claimants submit this Demand for Arbitration so that the Board can establish the Estimated Conveyance Price. Because the parties disagree about the actual amount involved,

and because PPLM has not provided CSKT with all of the documents and information that CSKT has requested, CSKT cannot provide the AAA with the precise amount involved.

17. The License provides that the Board's role is to establish the Estimated Conveyance Price. To the best of its information, knowledge, and belief, CSKT believes the amount of the Estimated Conveyance Price to be no more than \$16,026,414, as explained in ¶¶ 31-78. Accordingly, based upon the Remedy Sought by CSKT in this Demand for Arbitration, this is the amount in dispute. CSKT recognizes that the amount in dispute may change depending upon PPLM's answering statement. The AAA's Procedures for Large, Complex Commercial Disputes apply.

## **VII. NATURE OF THE DISPUTE**

### **A. OVERVIEW**

18. In this arbitration, the Board will be requested to establish the Estimated Conveyance Price for the Kerr Project. As defined, the Conveyance Price means the sum of:

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; [and costs and accumulated depreciation for automatic control equipment, communication equipment, and flooding rights related to the Kerr project]; provided, however, that the term "Conveyance Price" shall not include environmental costs incurred by MPC (regardless of the fact that it has not continued to be a co-licensee) that the Montana Public Service Commission [{"MPSC"}] has authorized MPC (regardless of the fact that it has not continued to be a co-licensee) to recover from its customers.

*PPL Mont., LLC*, 93 FERC ¶ 62,198 at ordering para. (C)(2) (2000) ("2000 Order") (emphasis added).

19. According to the PPLM Estimate, PPLM asserts that the Estimated Conveyance Price should be \$51,647,040. However, by wrongly attributing or overstating the costs in three

of the PPLM Estimate components, PPLM has grossly inflated its estimate of the Conveyance Price. These three components are: (1) Intangible Plant costs including environmental mitigation costs (“Intangible Costs”); (2) Tangible Plant Costs, including dams, turbines, generators, roads and bridges, etc. (“Tangible Costs”); and (3) other costs which PPLM has characterized as “Severance Costs.” CSKT disputes the costs that PPLM has attributed to each of these components. However, the principal dispute between the parties involves PPLM’s inclusion of Intangible Costs, which include certain environmental mitigation expenses that PPLM has recorded to the Commission’s Uniform System of Accounts (“USofA”) Account 303 “Miscellaneous Intangible Assets” (“Account 303”). 18 C.F.R. § 367.3030 (2012). In the PPLM Estimate, \$34,184,429 or nearly two-thirds of the PPLM Estimate is attributable to Intangible Costs. None of the Intangible Costs may be included in the Estimated Conveyance Price.

20. ***The PPLM Estimate is grossly inflated because it is based on costs that were never incurred and are unsubstantiated.*** According to PPLM, prior to conveying the Kerr Project in 1999, MPC recorded the amount of \$63,853,971 as a “net present value” (“NPV”) estimate of the future expenses associated with the implementation of License articles designed to protect and preserve fish and wildlife (“Fish and Wildlife License Articles”) on the Kerr Project lands. Even though PPLM has no documentation that MPC actually incurred these expenses, PPLM continued to record (and depreciate) the \$63,853,971 NPV estimate to Account 303. After applying its depreciation analysis, PPLM claims the original amount of \$63,853,971 should be valued at \$34,184,429 for purposes of calculating the Conveyance Price. Because the NPV estimate reflects virtual costs that were never incurred and are not part of the actual original cost of the Kerr, these costs may not be included in the Estimated Conveyance Price.

21. ***The PPLM Estimate is also grossly inflated because it records operating expenses associated with implementing Fish and Wildlife License Articles as capital expenses.*** PPLM has included Fish and Wildlife License Articles expenses in the PPLM Estimate as Intangible Costs. The Fish and Wildlife License Articles (License Articles: 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, and 76) were intended, by the License, to fund mitigation activities designed to protect, preserve, and restore the Flathead Reservation's natural resources that have been injured by Kerr Project operations. These environmental mitigation expenses are 100% annual operating expense obligations. The Fish and Wildlife License Articles include requirements to develop: a Fish Stocking, Supplementation Reintroduction Plan, Fish and Wildlife Habitat Acquisition and Restoration funds, a Fish and Wildlife Implementation Strategy; a Flathead Waterfowl Protection Area; along with various other services and funds. As explained *infra* in ¶¶ 39-68, because these expenses are operating expenses and not capital expenses, these environmental expenses may not be included in the Estimated Conveyance Price. The PPLM Estimate is grossly inflated because it includes such operating expenses.

22. ***The PPLM Estimate is grossly inflated because it includes MPC costs that MPSC had authorized MPC to recover from its customers.*** The Licensing Order, at Ordering Paragraph (C)(2), states that "the term 'Conveyance Price' shall not include environmental costs incurred by MPC (regardless of the fact that it has not continued to be the co-licensee) that the [MPSC] has authorized MPC (regardless of the fact that it has not continued to be a co-licensee) to recover from its customers." As explained *infra* in ¶¶ 54-61, the MPSC 2002 Order authorized full recovery of the MPC actual environmental costs. However, notwithstanding the plain language of the license, PPLM has included the MPC environmental costs within the PPLM Estimate and grossly inflated that estimate.

23. *The Estimated Conveyance Price should be no more than \$16,026,414 minus an additional amount to reflect appropriate depreciation of the tangible property as explained infra in ¶¶ 69-78.*

**B. LICENSE AND SETTLEMENT AGREEMENT**

24. Under the Federal Power Act (“FPA”), at the time a new license for an existing hydroelectric facility is sought, other parties, including Indian Tribes, may seek to have a license issued to them rather than to the existing licensee. The 1985 Licensing Order, incorporated by the Commission into the License, was intended to provide the CSKT and PPLM with a precise, straightforward method to calculate the Conveyance Price based on the USofA. It was also intended to mirror the price, based on the actual legitimate original cost of construction of the Kerr Project; any new licensee (including the United States) would pay upon takeover as a new licensee at the expiration of the initial license term.

25. The Conveyance Price is a defined term within the License, which was adopted by FERC from an initial 1985 Settlement Agreement, and was amended by the 2000 Order; a subsequent settlement agreement between PPLM, CSKT, and Department of the Interior (“DOI”). See *supra* at ¶ 18. The 2000 Order, in part, was used to clarify that certain Kerr Project environmental costs would not be included in the Conveyance Price.

26. In relevant part, the Conveyance Price includes “the actual original cost of the project (including an additions and improvements thereto) less accumulated depreciation, as reflected in MPC’s FERC accounts.” Licensing Order at ordering para. (C)(2)(a). Any estimate of the Conveyance Price will necessitate an examination of the “actual cost of the project,” and “additions and improvements thereto,” and what is the proper amount of “accumulated depreciation.”

27. The License requires that the Conveyance Price be calculated using the Commission's USofA standards, which are found at 18 C.F.R. Part 101. The USofA is the accounting system the Commission requires regulated entities to adhere to under a Commission issued license. MPC, and subsequently PPLM, were each required to maintain their respective books and records in accordance with the USofA. The Board has the authority to apply the standards of the USofA to specific MPC and PPLM expenditures to ensure that such expenditures are properly reflected in the Commission's accounts.

28. Furthermore, the phrase "as reflected in [PPLM's] FERC accounts" does not mean that a cost is automatically recoverable simply because MPC or PPLM recorded such cost in a FERC plant account. The actual costs must still be in accordance with the definition of Electric Plant Instruction ("EPI") 10: Addition and Retirement of Electric Plant. 18 C.F.R. Part 101, Electric Plant Instruction No. 10. Under EPI, not all amounts expended constitute an addition and improvement.

29. Implicit in the License's language is a requirement that such actual costs be properly booked in accordance with the USofA. Obviously, any other interpretation would have allowed MPC or PPLM to include impermissible costs (i.e., operating expenses) in the Conveyance Price through improper accounting practices. The Licensing Order clearly envisions that the Board would review these costs to ensure that they are properly included within the Conveyance Price.

30. The nature of the dispute between CSKT and PPLM involves a long history of communications between the parties, disagreements over accounting methods, and filings to the FERC initiated by a Petition for Declaratory Order filed by PPLM in FERC Docket No. EL 12-62-000 on April 26, 2012 ("PPLM Petition" or "Petition"), asking the Commission to intervene. In its Petition, PPLM seeks a declaration from the Commission that issues relating to compliance

with the USofA are not within the scope of issues to be decided by the Board. CSKT filed a Response to PPLM's Petition requesting that the Commission deny the PPLM Petition. The Commission has not indicated when or even if it will rule on the Petition.

### C. ESTIMATED CONVEYANCE PRICE

31. To the best of CSKT's information, knowledge, and belief, the Estimated Conveyance Price should be no more than \$16,026,414, minus an additional amount to reflect appropriate depreciation (including further adjustments based upon expected service life and net salvage value of the tangible property).

32. The CSKT estimate of \$16,026,414 includes: 1) \$14,606,496 in Tangible Plant Costs (this estimate is based partly on PPLM's outdated depreciation study and is therefore subject to change); 2) \$1,301,968 in Land value; and 3) \$117,950 in Severance Costs.

33. In contrast, the PPLM Estimate of \$51,647,040 includes: (1) Intangible Costs totaling \$34,184,429, related to the implementation of the Fish and Wildlife License Articles; (2) Tangible Costs totaling \$15,260,573; (3) the Kerr Project Land value totaling \$1,301,968; and (4) Severance Costs totaling \$1,105,250. (PPLM has also identified an offset of \$205,180, discussed *infra* in ¶ 61, which represents the amount PPLM alleges MPSC authorized MPC to recover from its ratepayers).

34. The most significant difference between the parties' estimates is based on PPLM's inclusion of Intangible Costs. For the reasons stated *supra* in ¶¶ 19-21 and *infra* in ¶¶ 39-68, none of the Intangible Costs, totaling \$34,184,429, should be included in the Estimated Conveyance Price.

35. CSKT also disputes PPLM's Estimate of Tangible Plant costs, because: (1) PPLM has failed to provide CSKT with adequate documentation for its estimate; and (2) PPLM has

incorrectly relied on an outdated 1994 MPC depreciation study (“1994 Depreciation Study”) to depreciate the costs associated with Tangible Plant assets. Regarding depreciation, both MPC and PPLM were obligated to perform depreciation studies on a regular basis, in order to comply with applicable accounting standards and to assure that depreciation rates and schedules are accurate and contemporary. Both MPC and PPLM failed to comply with this ongoing obligation to perform updated depreciation studies. PPLM has also failed to provide CSKT with the necessary information to allow CSKT to accurately calculate the appropriate depreciation of the tangible property. CSKT estimates that applying an updated depreciation study, (which reflects an accurate depreciation rate and schedule, expected service life and net salvage principles), could result in an additional significant reduction to the overall Estimated Conveyance Price. At this time, CSKT lacks sufficient information to determine the exact amount of appropriate depreciation.

36. Currently, CSKT does not dispute PPLM’s estimated value of the Kerr Project Land costs. However, CSKT requires additional documentation regarding the land purchase transactions to verify PPLM’s estimate before CSKT can provide a precise value for land costs.

37. Finally, with regard to the Severance costs, CSKT disputes some but not all of PPLM’s estimated costs. The primary dispute involves PPLM’s inclusion of legal fees as discussed *infra* in ¶ 79.

38. In order of importance, CSKT disputes the PPLM Estimate for the following reasons:

**D. THE INTANGIBLE COSTS RECORDED BY MPC OR PPLM MAY NOT BE INCLUDED WITHIN THE ESTIMATED CONVEYANCE PRICE.**

39. PPLM seeks to recover Intangible Costs totaling \$34,184,429, related to the implementation of the Fish and Wildlife License Articles. CSKT disputes the inclusion in the Estimated Conveyance Price of any of the Intangible Costs recorded in Account 303 by PPLM



for six separate reasons. First, the Intangible Costs are not capital costs, and the inclusion of such costs in Account 303 is contrary to the USofA provisions. Second, the Intangible Costs are based upon a 1997 net present value estimate associated with the anticipated cost of future implementation of the Fish and Wildlife License Articles, and were not actually incurred costs by either MPC or PPLM. Third, the Intangible Costs include costs that are double-counted by PPLM in its estimate. Fourth, the Intangible Costs include costs that CSKT will incur after the conveyance of the Kerr Project to CSKT, and will not be incurred by PPLM. Fifth, the Intangible Costs are costs that MPSC authorized MPC to recover from its ratepayers, and MPSC filings show that the MPC costs have already been recovered by MPC from its ratepayers. Sixth, the Intangible Costs are FPA section 4(e) costs which are not authorized under the License to be included in the Conveyance Price.

**1. *The Intangible Costs, Which Are Intended by PPLM to Represent the Costs Associated with MPC's and PPLM's Implementation of the Fish and Wildlife License Articles, Are Not Capital Assets and Therefore May Not Be Included Within the Estimated Conveyance Price.***

40. As stated above, the License provides that the Conveyance Price may include “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.” Licensing Order at ordering para. (C)(2) (emphasis added). The costs that were incurred by MPC and PPLM in implementing the Fish and Wildlife Articles are periodic operational expenses, which may not be booked to Account 303 or any other USofA plant account.

41. Account 303 provides that “[t]his account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility

operations and not specifically chargeable to any other account.” 18 C.F.R. Part 101, Electric Plant Accounts, 303 Miscellaneous Intangible Plant. The first clause means that Account 303 should contain costs associated with obtaining a license.

42. The costs associated with implementing the Fish and Wildlife License Articles were all incurred after the License was issued and are not costs associated with obtaining a license and, therefore, do not fall within the first clause of the definition of Account 303.

43. The second clause of the Account 303 definition limits Account 303 costs to “[costs that are] not specifically chargeable to any other account.” The Fish and Wildlife License Article costs are chargeable to at least two other accounts (e.g. Accounts 537 – Hydraulic Expenses and 545 – Maintenance of Miscellaneous Hydraulic Plant). Accounts 537 and 545 are expense accounts that are excluded from the Conveyance Price calculation. On this basis, all the costs currently booked to Account 303 should be booked in an account other than Account 303. As such, these costs may not be considered an actual original cost of the Kerr Project (including any addition or improvement thereto).

44. Furthermore, costs that are unrelated to “additions and improvements thereto,” such as the costs associated with creation or development of strategies and plans required by Articles 63, 64, and 65, may not be included in the Conveyance Price. Costs associated with these obligations are not “additions and improvements” because they are not physical modifications of the Kerr Project infrastructure. The term “additions and improvements” would only apply to the actual physical additions and improvements (such as the construction of the shore erosion projects originally envisioned by Articles 68 and 73, which are no longer required) and not to intangible assets such as the plans and strategies noted above.

**2. *The Intangible Costs Are Based upon a 1997 Present Value Estimate Associated with the Anticipated Cost of Future Implementation of the Fish and Wildlife License Articles, and Are Not Costs that were Actually Incurred by Either MPC or PPLM.***

45. In its September 2010 Estimate, PPLM alleged—without providing any meaningful documentation—that MPC and PPLM had expended roughly \$84 million implementing the Fish and Wildlife License Articles. The \$84,033,916 gross cost was offset by \$49,849,487 in accumulated depreciation and amortization for a net cost of \$34,184,429, which PPLM is attempting to include in the PPLM Estimate as Intangible Costs.

46. The \$84,033,916 total represents the costs that both MPC and PPLM included in Account 303. An amount of \$63,853,971 was included by MPC. This amount was booked as an NPV estimate of expenses MPC anticipated having to pay for the implementation of the Fish and Wildlife License Articles. PPLM recorded an additional \$20,179,945 to Account 303 after it acquired the Kerr Project from MPC. According to PPLM, PPLM has either depreciated or amortized this entire amount to zero, so the \$20,179,945 recorded to Account 303 by PPLM has no net impact on the Conveyance Price. This means that the entire net cost of \$34,184,429, which is recorded to Account 303, is solely comprised of MPC's NPV estimate.

47. Definition 9 of the USofA states in part “[c]ost means the amount of money actually paid for property or services.” MPC's NPV estimate is not eligible for inclusion in Account 303 because it does not represent the actual original cost of the Kerr Project including any additions and improvements thereto. Rather, the NPV calculation is an estimate.

48. Based solely on accounting estimates, in 1997, MPC initially recorded approximately \$57 million in Account 303 based on an NPV calculation. This NPV estimate included MPC's estimate of the total costs of compliance with all the Kerr Project license article requirements for the period of September 1985, the date the License was issued, through September 2035, the

License expiration date. By 1999, the date of MPC conveyed the Kerr Project to PPLM; it appears that the amount recorded by MPC to Account 303 grew to \$63,853,971. PPLM relied upon this amount in developing its Estimated Conveyance Price.

49. In PPLM's Petition to FERC, it stated: "[t]he calculation of the Conveyance Price is based on net investment in the [Kerr] Project, as reflected in the licensee's books of accounts, as those accounts are maintained in accordance with FERC's USoA." PPLM Petition at 3. This is not accurate. The Conveyance Price is to be based on "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." Licensing Order at ordering para. (C)(2). The amounts properly recorded on the books and records in the plant accounts, as original costs in conformance with USofA, at the Conveyance Date should represent MPC's actual original costs as prescribed and required by the Commission's USofA.

50. MPC and PPLM did not actually spend \$84,033,916 (which after depreciation represents \$34,184,429 of the total \$51,647,040 PPLM Estimated Conveyance Price), implementing these Fish and Wildlife License Articles, and the documentation of MPC's and PPLM's expenditures does not reflect such expenditures. Accordingly, the costs associated with implementing the Fish and Wildlife License Articles are not "actual original cost[s] of the project (including any additions and improvements thereto)" as provided in Ordering Paragraph (C)(2) of the Licensing Order, and therefore, cannot be included in the Conveyance Price.

**3. *The Intangible Costs Include Costs that Are Double-Counted by PPLM in Its Estimate.***

51. PPLM has provided no documentation to explain its basis for recording \$20,179,945 of its costs to Account 303. The PPLM costs appear to be based upon the actual costs incurred

by PPLM for implementing Fish and Wildlife License Articles for most of the period PPLM has held the License. However, MPC had already recorded estimates of these same costs, at present value, in 1997. In the PPLM Estimate, PPLM has impermissibly recorded to Account 303 as Intangible Costs both its actual costs for implementing the Fish and Wildlife License Articles and MPC estimates of these same costs. PPLM then impermissibly included both costs in its Estimated Conveyance Price. As such, part of the PPLM Estimate double-counts the impermissible costs associated with implementing the Fish and Wildlife License Articles.

52. For example, MPC has recorded an NPV estimate of the annual payments under License Article 66 for the remaining term of the FERC license. After PPLM acquired the Kerr Project from MPC, PPLM then also recorded the actual monetary payments required by the Fish and Wildlife License Article 66 (until 2006) to Account 303. As a result, the 2010 Estimate and Explanation double-counted the specific costs associated with implementing these license articles and impermissibly recorded the inflated amount to Account 303.

**4. *The Intangible Costs Include Costs that CSKT Will Incur After the Conveyance of the Project to CSKT, and Will Not Be Incurred by PPLM.***

53. The PPLM Estimate also includes the NPV estimates of CSKT costs for implementing the Fish and Wildlife License Articles that CSKT will incur after the License is conveyed to CSKT. In essence, by including the cost estimates in the PPLM Estimate, PPLM is demanding that CSKT pay PPLM for costs that CSKT, not PPLM, will incur after 2015. Such costs are not PPLM actual costs, and cannot be included in the Conveyance Price.

**5. *The Intangible Costs May Not Be Included in the Estimated Conveyance Price Because Such Costs Are Costs that MPSC Authorized MPC to Recover from Its Ratepayers and MPSC Filings Show that the MPC Costs Have Already Been Recovered by MPC From Its Ratepayers.***

54. The FERC License for the Kerr Project, at Ordering Paragraph (C)(2), was amended by the FERC in 2000 to state that “the term ‘Conveyance Price’ shall not include environmental costs incurred by MPC (regardless of the fact that it has not continued to be the co-licensee) that the [MPSC] has authorized MPC (regardless of the fact that it has not continued to be a co-licensee) to recover from its customers.”

55. On January 29, 2002, the MPSC issued a Final Order in The Matter of the Application of MPC for approval of its Electric Utility Restructuring Transition Plan Filed Pursuant to Senate Bill 390 in Docket No. D97.7.90 (“MPSC 2002 Order”). The MPSC 2002 Order addressed the sale of MPC’s energy public utility businesses.

56. The MPSC 2002 Order stated:

MPC’s October 29, 2001 Tier II filing represented an affirmative showing of the Company’s claimed transition costs pursuant to § 69-8-221 (2), MCA. This showing reflected MPC’s mitigation efforts. MPC reasonably demonstrated the methods it relied on to determine the value of all generation assets, liabilities and electricity supply costs. MPC established a value for the hydroelectric and thermal generating plants it sold to PPL Montana based on the purchase price associated with that sale, which was the result of a competitive bid process.

57. MPC’s Tier II filings in MPSC Docket No. D97.7.90 identified \$33,603,364 of actual dollars spent and recorded as Kerr Project Mitigation Costs.

58. The MPSC 2002 Order authorized full recovery of the \$33,603,364 of MPC’s Project actual mitigation costs in this proceeding as properly charged against the purchase price and thus to be recovered. This amount is derived from Exhibit (EJK-A) in that proceeding, entitled Generation Asset Sale Schedule of Net Proceeds and Fixed Transition Costs, page 1 of 49, lines

55, labeled payments for Kerr mitigation post-closing \$25,358,592, and line 56, labeled payments for Kerr mitigation pre-closing \$8,246,772.

59. The MPSC 2002 Order definitively identified the assets that PPLM was purchasing from MPC so that the MPSC could identify which assets were and were not subject to reimbursement for transition costs. Kerr Project environmental mitigation costs were not included among the assets that PPLM was purchasing from MPC and, were therefore subject to reimbursement from ratepayers (i.e. MPC customers).

60. On the basis of the foregoing, none of the environmental mitigation costs recorded by MPC are eligible for inclusion in the Estimated Conveyance Price for the Kerr Project as actual original cost of plant, or subsequent additions and improvements, because MPC was authorized by the MPSC to recover these costs from its customers.

61. Additionally, although PPLM includes a “Regulatory Recovery Cost Offset” in the amount of \$205,180 within its Estimated Conveyance Price, PPLM fails to provide any evidence in support of this cost item. As a consequence, it is impossible for CSKT to determine whether this item is relevant, accurate, or permissible in the Estimated Conveyance Price generally, and whether it was authorized by the MPSC specifically.

**6. *The Intangible Costs Are FPA Section 4(e) Costs Which Are Not Authorized Under the License to Be Included in the Conveyance Price.***

62. Section 4(e) of the FPA authorizes FERC to issue licenses for hydropower projects located on public lands and reservations of the United States, such as National Forests, Indian Reservations, and military reservations, provided that FERC: (1) finds that the project will not interfere with or be inconsistent with the purpose of the reservation; and (2) includes in the license conditions deemed necessary by the Secretary of the agency administering the reservation for the adequate protection and utilization of the reservation. 16 U.S.C. §§ 797(e), 796(2).

63. Pursuant to FPA section 4(e), the Commission included the Fish and Wildlife License Articles in the License to protect the Flathead Reservation. *Id.* § 797(e).

64. The PPLM and MPC's Fish and Wildlife License Articles costs are intended to fund mitigation activities that are "necessary for the adequate protection and utilization" of the Reservation. *Escondido Mut. Water Co. v. La Jolla*, 466 U.S. 765 (1984). They are intended to protect, preserve, and restore the federal reservation directly impacted by the FERC licensed Kerr Project.

65. In the PPLM Estimate, PPLM attempts to recover the MPC and PPLM costs for complying with their Kerr Project environmental mitigation obligations during the time they operated the Kerr Project and award the full benefits of the Kerr Project to PPLM. In so doing, PPLM attempts to shift its responsibility for payment to CSKT for environmental mitigation activities attributable to the term of the license, when MPC and PPLM were the operators and beneficiaries of the Kerr Project. Such an outcome would allow PPLM to procure all of the economic benefit of the Kerr Project for its tenure as licensee, and shift the conventional costs for mitigating all injuries caused to the Flathead Reservation fish and wildlife resources to CSKT.

66. The plain language of the License does not authorize PPLM to recover its FPA section 4(e) costs as part of the Estimated Conveyance Price or Conveyance Price. The License does not provide that CSKT would be required to reimburse MPC or its successor-in-interest PPLM for these FPA section 4(e) costs. Allowing PPLM to obtain such reimbursement would be inconsistent with the plain language of the License and the purposes of FPA section 4(e).

67. The plain language of the 1985 Settlement Agreement, from which the original terms of the License regarding Conveyance Price are derived, also recognized that the DOI, pursuant to



its FPA section 4(e) authority, would be subsequently imposing fish and wildlife articles into the License, without requiring CSKT to reimburse MPC or its successor-in-interest PPLM for any such costs. After receiving review and recommendation for approval from FERC staff, the Commission has followed this approach in its Licensing Orders for the Kerr Project since 1985. *Mont. Power Co.*, 32 FERC ¶ 61,070 (1985).

68. The costs associated with implementing the Fish and Wildlife License Articles are the type of normal, annual, reoccurring business costs that any licensee would incur, regardless of whether the Project was on a Reservation, on federal or private lands. This fact strengthens the argument found *supra* in ¶¶ 40-44, that these costs should not have been capitalized because they are the cost of doing business.

**E. THE TANGIBLE COSTS MAY NOT BE INCLUDED IN THE ESTIMATED CONVEYANCE PRICE UNLESS PROPERLY DOCUMENTED AND PROPERLY DEPRECIATED.**

69. CSKT acknowledges that the types of costs PPLM included in its Tangible Costs estimates are the kind anticipated by the License. However, CSKT disputes PPLM's inclusion of \$15,260,573 in its Estimated Conveyance Price as Tangible Costs because: (1) PPLM has provided little or no documentation of these costs; and (2) PPLM relied on the outdated 1994 Depreciation Study to justify these costs; that study incorporates an incorrect and outdated depreciation rates and possibly an improper end of service life analysis. To the extent that the Board concludes that any portion of the Intangible Costs may be included in the Estimated Conveyance Price, the Board should not include any unjustified and improperly depreciated Intangible Costs in the Estimated Conveyance Price, because these costs were calculated and depreciated based on the same outdated 1994 Depreciation Study, and therefore, suffer from the same defects as the Tangible Costs.

**1. *Tangible Costs that PPLM Cannot Document in Compliance with the USofA May Not be Included in the Estimated Conveyance Price.***

70. Pursuant to the USofA and the Kerr Project License, PPLM is required to “keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account” so that “[e]ach entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.” 18 C.F.R. Part 101, General Instructions (2)(A). With regard to hydropower plants specifically, “[r]ecords related to hydroelectric facilities . . . must be retained until . . . [t]he Commission has determined the actual legitimate original cost of the facilities, or the licenses are surrendered.” *Id.* § 125.2(g)(2). PPLM assumed responsibility for acquiring and retaining such records when it acquired the Project from MPC. The USofA provides that when a “plant is sold, the associated records or copies thereof, must be transferred to the new owners.” *Id.*

71. The Kerr Project License requires that PPLM “provide the Tribes, [DOI], and the Commission with a written estimate of the Conveyance Price . . . together with an explanation of how that estimate was derived.” PPLM has failed to comply with the requirement to provide an explanation that is in accordance with USofA. PPLM has produced six sentences of spare narrative explanation and three spreadsheets of spare cost summary. It has not provided any ledgers, subledgers, work orders, or invoices to support over \$51 million in supposed original costs. PPLM, subject to a non-disclosure agreement, allowed CSKT to review some MPC documentation but has refused to make those documents available to the Commission and DOI. PPLM has not provided any PPLM accounting records. As a result of PPLM’s failure to provide records as required by USofA, CSKT is unable to verify, with accuracy, any of PPLM’s claimed “costs.” When preparing its “explanation” of the PPLM Estimate, PPLM was to organize its

materials “as reflected in MPC’s FERC accounts (as those accounts are maintained in accordance with routine Commission audit and compliance procedures).”

72. PPLM as the licensee has the burden of proof in accounting for MPC’s expenditures and its own expenditures. *Niagara Falls Power Co. v. FPC*, 137 F.2d 787, *cert. denied*, 320 U.S. 792, *reh’g denied*, 320 U.S. 815 (1943); 18 C.F.R. § 41.8 (“[t]he burden of proof to justify every accounting entry shall be on the person making, authorizing, or requiring such entry.”). PPLM is obligated to provide justification and documentation for every accounting entry. In providing information to support any accounting entry, sufficient evidence must be provided to allow a reasonably qualified person to make a judgment as to whether the entries are just, reasonable, and appropriate. Both MPC and PPLM had and have an obligation to ensure that all of the records necessary to accurately and correctly determine the Estimated Conveyance Price are available for review.

73. PPLM has the burden of proof to account for MPC’s and its own expenditures. PPLM has failed sustain its burden because it is either unable or unwilling to produce evidence of MPC’s expenditures and its own expenditures. Accordingly, none of PPLM’s unsubstantiated costs may be included in the Estimated Conveyance Price.

**2. *PPLM Used an Outdated Depreciation Study to Calculate Its Estimated Conveyance Price.***

74. The depreciation rate employed in the Conveyance Price by PPLM was derived from the 1994 Depreciation Study. The depreciation rate attributable to the Kerr Project represents a very small component of the overall 1994 Depreciation Study, which dealt with all MPC production, transmission, distribution, and general plant accounts. The 1994 Depreciation Study is now more than 17 years old. The results of the 1994 Depreciation Study cannot be utilized or recognized as valid beyond the industry and MPC standard three- to five-year timeframe in

between depreciation studies. An MPC 1987 study recommended that MPC continue its practice of reviewing depreciation rates at “no more than five year intervals.”

75. The 1994 Depreciation Study was adopted by the MPSC during a settlement agreement (“MPSC Settlement”), which recognized that the depreciation account parameters and accrual rates, used in that study, were for the sole purpose of that settlement. The MPSC Settlement further recognized that the depreciation parameters and accrual rates would not be considered precedential. Further, underscoring the limited purpose of the depreciation rate reflected in the MPSC Settlement is the statement that the depreciation rates are “a compromise in settlement to be relied upon until the next depreciation study is presented by the Company, and new parameters and accrual rates are approved by the Commission.”

76. In other words, it was fully contemplated by all parties, including MPC, that the 1994 Depreciation Study’s depreciation rates were temporary. An Estimated Conveyance Price based on the outdated 1994 Depreciation Study cannot be relied on at this time.

77. CSKT has analyzed the 1994 Depreciation Study, including the depreciation rates and believes the rates used by PPLM are likely incorrect. Additionally, the factors used to develop the depreciation rates in the 1994 Depreciation Study are also likely incorrect. In order to properly account for the value of the Tangible property, a full depreciation rate study should have been undertaken, however, CSKT lacks adequate information to determine the precise factors that should have been used by PPLM.

78. PPLM should not be allowed to include over \$15 million in Tangible Costs in the Estimated Conveyance Price because it failed to properly depreciate these costs during the time PPLM owned the Kerr Project. Based upon the information available to CSKT and the

application of appropriate depreciation rates for Tangible Costs, CSKT believes that the Tangible Costs should be at most, \$14,606,496.

**F. PPLM'S LEGAL EXPENSES ASSOCIATED WITH DEFENDING WATER RIGHTS MAY NOT BE INCLUDED WITHIN THE ESTIMATED CONVEYANCE PRICE.**

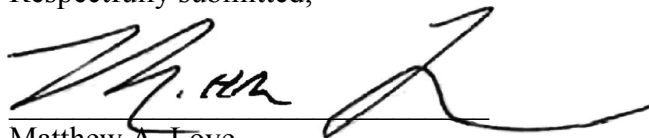
79. The License also defines the term "Conveyance Price" to include: 1) costs of automatic control equipment; 2) costs of replacing communication facilities; and 3) original costs of any flooding rights or other interests in realty outside the project. Licensing Order, ordering para. C(3)(b)-(e). In its Estimated Conveyance Price, PPLM appears to characterize these conveyance price components as "Severance costs." PPLM included \$1,105,250 in Severance costs in the PPLM Estimate. PPLM did not provide adequate rational or supporting documents to substantiate these costs. However, the minimal information PPLM did provide indicates that PPLM is attempting to include legal costs associated with defending its flood rights as "Severance costs." These legal costs, totaling \$987,300, do not fit within the License's definition of "Conveyance Price" and, therefore, should not be included in the Estimated Conveyance Price or the Conveyance Price. CSKT estimates that the costs that PPLM has characterized as Severance Costs should only be \$117,950.

**VIII. REMEDY SOUGHT**

For the reasons discussed in this Demand, the Claimants, by their counsel, respectfully request the following remedies:

1. an expedited hearing before an AAA Board of Arbitration; and
2. a final decision by the Board of Arbitration on or before March 5, 2014, setting forth the Estimated Conveyance Price, in an amount of no more than \$16,026,414, and explaining in reasonable detail the basis for the Estimated Conveyance Price.

Respectfully submitted,



Matthew A. Love  
Michael F. McBride  
Van Ness Feldman, LLP  
719 Second Avenue  
Suite 1150  
Seattle, WA 98104  
Tel: (206) 623-9372  
Fax: (206) 623-4986  
[mal@vnf.com](mailto:mal@vnf.com)  
[mfm@vnf.com](mailto:mfm@vnf.com)

Joe Hovenkotter  
Staff Attorney  
Confederated Salish & Kootenai Tribes  
P.O. Box 278 / 36100 2nd Street East  
Pablo, MT 59855  
Tel: (406) 871-9788  
Fax: (406) 675-4665  
[jhovenkotter@gmail.com](mailto:jhovenkotter@gmail.com)

Counsel for the Confederated Salish  
and Kootenai Tribes of the Flathead Reservation

Dated: December 21, 2012

*Mont. Power Co.*, 32 FERC ¶ 61,070 at ordering para. (C)(3) (1985).

(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

**[61,182]**

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.



**CERTIFICATE OF SERVICE**

I, Matthew A. Love, do hereby certify that on December 21, 2012, a true and correct copy of the enclosed Demand for Arbitration was forwarded by e-mail and paper service to the following parties:

David B. Kinnard, Esq.  
Associate General Counsel  
PPL Montana, LLC  
303 North Broadway  
Suite 400  
Billings, MT 59101  
Email: dbkinnard@pplweb.com

David R. Poe  
Partner  
Bracewell & Giuliani LLP  
2000 K Street, NW  
Suite 500  
Washington, DC 20006-1872  
E-mail: david.poe@bglp.com

/s/ Matthew A. Love  
Matthew A. Love  
Van Ness Feldman, LLP  
719 Second Avenue  
Suite 1150  
Seattle, WA 98104  
Tel: (206) 623-9372  
Fax: (206) 623-4986  
E-mail: mal@vnf.com

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