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RE: Seattle City Light Skagit Project

Greetings,

Together with our Caucus B partners, Skagit County has been involved in the federal relicensing of Seattle City Light's Skagit Project since March 2020. We are hopeful that your recent retention as legal counsel for Seattle City Light ("SCL") will produce meaningful and positive change, as you suggested would be the case in our recent meeting. I wanted to follow up with a letter clearly laying out Skagit County's position on this matter, there apparently being some level of confusion about our objectives and motives.

Under its last Skagit Project license, SCL has contributed 37 times less to salmon than the Pacific Northwest hydropower average. With multiple Skagit species sliding toward extinction, it is clear that the *status quo* on the Skagit is not working, and we believe that SCL's current approach will lead to continued poor outcomes for the resource, our community, and Seattle as well.

Rather than carrying on with SCL's flawed strategy of using the adversarial ILP process to fight the idea that SCL's dams impact the Skagit and its fisheries, we believe that SCL should contribute a regionally equitable salmon investment in the Skagit, to be deployed by Skagit Treaty Tribes through consensus, with federal resource agency oversight, and local government input and assistance. We believe this is the best long-term approach.

Our reasoning is explained in detail below.

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As Jay readily acknowledged in our meeting last week, the Skagit is by far the most important salmon river in the Salish Sea, home to all five species of Pacific salmon as well as steelhead, bull trout, dolly varden, sea-run cutthroat trout and other species, most of which are in long-term decline due to a broad range of causes, with three Skagit anadromous species as well as the Southern Resident Killer Whale (“SRKW”) listed under the Endangered Species Act (“ESA”), and tribal as well as non-tribal fishery closures the increasing norm. This trend appears to have accelerated over the course of SCL’s last FERC license, issued in 1995.

Pursuant to the 1855 Treaty of Point Elliott, the Skagit Treaty Tribes peaceably gave up the Skagit land base to a colonizing society on the promise that harvestable levels of anadromous species would remain in the Skagit ecosystem – forever. This is a specifically enforceable right, i.e., it is not reducible to money, and can’t be bought out. As a result, the entirety of the Skagit ecosystem is subject to a perpetual environmental servitude, judicially recognized, a collective national obligation, requiring, in practical terms, that all those with an impact on the Skagit reasonably carry their weight. It is an obligation that impacts and influences virtually everything that occurs in Skagit County.

Skagit County is extremely concerned about the resource, and the impacts of its decline on the Skagit ecosystem.

As you know, Skagit County is the government of general jurisdiction in virtually the entirety of the land base downstream of the Skagit Project, including the Skagit River to its mouth in Skagit Bay. Skagit County is responsible to comprehensively plan for land use and shorelines throughout the Skagit, and, in concert with our junior taxing districts, we provide the range of civilizational services – roads, schools, law enforcement, fire protection, drainage, and much else, relied on daily by our citizens, including the four federally-recognized Indian tribes located within Skagit County.

The Skagit is also some of the world’s richest farmland, which is under tremendous development pressure from surrounding urban areas such as Seattle, with its preservation a centerpiece of our Growth Management Act-required Comprehensive Plan. Like our state and federal administrations, Skagit County is highly concerned about the oncoming effects of climate change and disruption to existing systems that it portends. To those of us with deep understanding of the necessary inputs, climatic vulnerability and non-negotiable nature of food production, we can think of few tasks more important in the face of climate change than protecting the Skagit’s temperate, well-watered, alluvial farmland. It can always be managed better, but once it is gone, it is gone.

As a community, we have consciously chosen to forgo the rapid growth that the City of Seattle has attracted over the last century (in part by offering some of the nation’s lowest power rates), instead successfully protecting the rural Skagit land base required for farming, forestry and

fisheries through some of the most restrictive zoning laws in the nation. We note that many thousands of Seattlites appear each weekend to enjoy what we have protected in the Skagit through our community's sacrifice.

Reconciling these competing interests and needs is a daunting task, and, as such, Skagit County government has a strong and abiding interest in each and every aspect of the ongoing Skagit FERC relicensing insofar as it involves Skagit fisheries, the Skagit land base involved and the habitat required, as well as SCL's plans and objectives for the Skagit ecosystem generally, which, thus far, SCL has not been interested in openly sharing with Skagit County government at any level.

While acknowledging that it is a sensitive subject and one we would prefer not to have to raise, we are also extremely concerned about the manner in which SCL, a distant city's power utility, has used its extensive political reach to insert itself into our community and its governance structures as a substitute for a regionally equitable salmon investment in the Skagit. While "divide and conquer" in pursuit of environmental cost reduction is certainly a tried and true tactic for energy industry attorneys helping a client impose their will on the communities in which they operate, we believe this approach has damaged the Skagit and our community for many years running, and promises to continue harming us absent a change in SCL leadership's hearts and minds. While this approach is something one might expect from, say, a private fossil energy corporation, it seems deeply inconsistent with the moral leadership that Seattle frequently claims on issues of the environment, salmon, and Treaty rights. This is not meant as criticism about the past, so much as a suggestion to a new legal team for future improvement.

As such, we are committed to seeing this through to a better outcome for our community, wherever that may lead.

In an effort to define what it means to carry one's weight in the Skagit, it seems an accurate characterization of the Federal Power Act to say that the relevant question is whether mitigation that the Skagit Treaty Tribes and resource agencies will ultimately seek to impose on SCL's federal license in the course of the ILP process, as the Federal Power Act empowers them to do, is reasonable and effective mitigation for the totality of the Skagit dams' impacts. Which is to say, it is important to remember that the process is not focused on directly unwinding each and every dam impact (which is functionally impossible), but rather is about contributing to harvestable levels of salmon in the most effective way possible, as determined by federal resource agencies and Skagit Treaty Tribes. That, ultimately, is where this FERC relicensing exercise is headed.

While the SCL Skagit Project provides cheap clean electricity and flood control, from a fisheries perspective the SCL dams block 37% of the Skagit River and are slowly starving the river downstream of nutrients and habitat, none of which is in reasonable dispute. SCL has gone through great effort to focus everyone's attention on SCL's historical narrative about the Skagit River immediately prior to the construction of the SCL dams, but, at the end of the day, what was

there previously has been destroyed or inundated by SCL's dams, and thus history has utility only as one possible metric by which to measure impact. As NMFS, the Skagit Treaty Tribes and others have made abundantly clear in their study requests and comments filed with FERC, there is simply no evidence of a dispositive fish barrier. As such, SCL's historical narrative is not, as the public has been led to believe, the dispositive question in the ongoing dispute over SCL's dams.

Rather, the more important question is what sort of mitigation will actually work effectively to increase harvestable levels of salmon and steelhead in the Skagit – that being the principal performance metric our collective Treaty obligation invokes – which is a question of mitigation feasibility.

In other words, we believe that SCL should acknowledge it has an obligation to the Skagit, and then fund, at a regionally equitable level, an indigenous-led action plan focused on increasing levels of harvestable salmon and steelhead. It's hard for us to believe that the people of Seattle would not support this.

In earlier times it was broadly recognized that SCL's dams had a significant fisheries impact, and, resultantly, SCL financially contributed to Skagit hatcheries. In more recent years, traditional hatcheries have fallen out of fashion, and hatchery funding was not included in the 1995 license. While SCL abated the worst of the flow interruption / fish stranding impacts with its ramping regime in the 1995 license, it addressed that particular impact, but no others.

The objective economic reality is stark: SCL has contributed a mere \$12 million to fisheries over the course of the 25 years since its 1995 license was issued.¹ This is 37 times less per megawatt than the regional (i.e., Pacific Northwest) hydropower average salmon investment, and 59 times less than that which Puget Sound Energy, our local power provider, is contributing on its Baker River project.²

It is extraordinarily difficult to see environmental justice in these ratios. It is even more difficult to perceive justice in light of the relatively light burden a regionally equitable investment by SCL would involve.

¹ In a recent public records response, SCL claimed that its flow regime under the 1995 license is valued at \$30 million. SCL acknowledges that this is highly speculative and unreliable data. Also, the numbers that NMFS reports by way of other hydro operators' salmon spending do not apparently include flow regime numbers, so considering flow regime numbers is not an apples-to-apples comparison. More importantly, the flow regime is meant to cure problems with the flow regime, not all the other impacts that remain at issue. Even if we are to give credit to SCL for the financial implications of the flow regime, assuming all numbers in the light most favorable to SCL, the salmon investment on the Baker is still 11.7 times higher than SCL's contribution under the 1995 license – which, obviously, is not very impressive either.

² We would further note that these other projects' improvements have a demonstrable record of providing significant benefit.

In assessing what constitutes regional equity, the SCL Skagit Project is most analogous to Puget Sound Energy's Baker River project, a Skagit tributary involving very similar geography and dams. It is even more closely analogous given that the Baker River salmon investment is being repaid by Skagit locals, including Skagit Treaty Tribes and their members, through our own local power rates.

On its 170 megawatt ("**mW**") Baker River project, per records obtained from NMFS, Puget Sound Energy contributed a \$170 million salmon investment pursuant to its 2008 FERC license, equating to \$1 million/mW. Using dollars per mW as a metric to create an apples-to-apples comparison between different projects, on the 711 mW Skagit Project a regionally equitable salmon investment would equate to \$711 million. Spread over the 50-year term of a new FERC license and Seattle's approximately 465,000 customers, assuming 4% bond interest, this equates to \$5.90/month per Seattle customer, or roughly the cost of a latte per month.

We think this request is particularly appropriate given the significant economic benefit that Seattle obtains from the Skagit. While the Skagit Project produces nearly a third of the power that Seattle generates, Seattle has obtained "green power" certification of the Skagit Project from the Massachusetts-based Low Impact Hydropower Institute ("**LIHI**"), which, in turn, has gained Seattle access to distant green energy markets and their attendant high dollar wholesale power sales of Skagit-origin power, revenue that is used to subsidize Seattle's purchase of cheap BPA power for its own internal usage, which comes from, in part, the Lower Snake River Dams. All of this clever business activity has led to SCL being able to offer power rates 36% lower than national average to Seattle customers (despite overhead percentages quite a bit higher than other public power utilities such as Chelan County PUD). This, in turn, has helped Seattle attract the significant business activity (particularly tech-driven business such as Amazon) that has made Seattle a global commerce center. To simplify this concept, the entire Seattle enterprise has generated immense wealth in some measure due to what has been taken from the Skagit.

As such, we believe that Seattle has an obligation to give back to the Skagit, in part because a "green power" certification in the Skagit inherently ought to include more respect for fisheries and Treaty rights, manifesting in the form of a regionally equitable salmon investment in the Skagit.

Rather than pursuing a strategy of engagement and cooperation that a regionally equitable salmon investment would involve, since the beginning of the FERC relicensing and up to the current moment SCL has instead opted to use the adversarial, litigation-centric federal ILP process in an effort to argue that its Skagit dams, allegedly, have little to no impact on Skagit anadromous species, which, of course, is ultimately an effort to avoid making a regionally equitable salmon investment in the Skagit.

Let alone coming to the table with a regionally equitable salmon investment in the Skagit, SCL refused to study fish passage above its dams in any fashion for the past several years of relicensing discussion, right up until this past February 2021, several days after KING 5 began running media coverage. Like the rest of the Caucus B group, Skagit County again notes our hope that your recent hiring as SCL's legal counsel also heralds a more enlightened approach, and we offer our comments with hope for future improvement, but what we have seen so far more resembles trench warfare than a good faith effort to helpfully participate in the Skagit ecosystem.

We are not lacking for plans to recover salmon in the Skagit. The Skagit has been studied, fought over and talked about to great extent and expense for the past 25 years, while the big and meaningful projects sit largely undone and unfunded. We are extremely concerned that SCL's divisive approach, if allowed to continue, will lead to many more years and many more tens of millions of dollars wasted on contested studies, dispute resolution, attorneys, disagreements over project priorities, consultants, and fruitless process, while Skagit anadromous species continue their inexorable decline toward extinction, and our community, Skagit Treaty Tribes included, suffer the consequences.

The current flawed approach will also likely see SCL continue to divide our community, inflaming old wounds while straining the resources of both local Skagit government and small Skagit tribes in these trying times that demand efficiency and cooperation, all of which, ultimately, is in pursuit of slightly lower power rates for Seattle customers. We have little doubt that SCL has the ability to bury a significant level of environmental conflict expense in its \$1.2 billion/year annual budget, but we disagree that it is a good thing for anyone concerned.

The foregoing paradigm generally reflects the pattern over the past 25 years in the Skagit, and we think it is high time for a different plan.

The lack of consensus and funding around ecosystem-scale effort has pushed habitat projects into random, opportunistic acquisitions, using, in part, the inadequate trickle of money that SCL has contributed to Skagit fisheries over the past 25 years. The relatively uncoordinated, haphazard, conflict-riven, and poorly-funded habitat effort this has produced has led to problems for Skagit County, as we end up dealing with flooding and other problems that arise when project long-term management and funding is inadequately considered, when parties fail to obtain necessary land use permits, and the like. Some projects, such as SCL's Anderson Creek effort, actually appear to have harmed salmon.

We want to be clear that we are NOT criticizing local people and entities that have been working diligently on habitat in the Skagit these past 25 years, and, if anything offer them praise for how much they have accomplished with so little. While we applaud the good work they have done and their good intentions involved, it is also plainly the case that what has transpired thus far is inadequate to the task, and we are deeply troubled by the extent that our local salmon non-profit

ecosystem is clearly being utilized by SCL as a cover story to distract from SCL's grossly inequitable salmon investment in the Skagit.

We are doubly concerned because SCL's approach seems to require that Seattle use its political reach to undermine what is transpiring with the Caucus B partnership – an organically-arising, local effort at reconciliation that has, for the past year, been demonstrably bringing down long-held barriers between tribal and non-tribal communities, barriers that have existed for generations in the Skagit and long predate any of us. We hope that SCL and its allies recognize what is transpiring and tread lightly, which is the appropriate posture for a distant city's power utility in this situation.

For our part, we hope to see the Caucus B partnership continue to grow as a force for healing in our community, by continuing to bring us together around a consensus-based plan for ecosystem-scale projects that have been thus far unattainable due to lack of funding and consensus.

Through our participation over the course of the last year in the inclusive Caucus B partnership, we have learned that despite the constant claims of conflict in the Skagit by SCL and its allies, there is actually reasonably broad local agreement on the high-priority measures needed to recover anadromous species in the Skagit ecosystem – namely, delta estuarine habitat, culvert replacement, and, potentially, fish passage.

As such, the central purpose of this letter is to express that Skagit County government is ready, willing and able to assist in the planning and execution of the Skagit Treaty Tribes' recovery priorities. We place a significant level of trust in Skagit Treaty Tribes to pursue diligently and effectively those projects most likely to increase harvestable salmon in the Skagit.

With respect to delta habitat in particular, we stand ready to assist in the planning and execution of large-scale private land delta habitat projects in fulfillment of the Skagit Chinook Recovery Plan's objectives, so long as projects are done with requisite permits and involve consensus among the three Skagit Treaty Tribes that the project in question is a high salmon recovery priority.

We also need to express that the lower Skagit is infinitely valuable *both as farmland and salmon habitat*, and it is therefore imperative that we carefully and deliberately deconflict the two, a significant share of which can be addressed through the County's Hearing Examiner Special Use Permit required for large-scale habitat projects, intended to ensure that habitat projects don't flood or otherwise harm surrounding farmland.³ As previously noted, Skagit County government has a

³ As to other difficult subjects (that may not be directly related to the FERC relicensing), Skagit County is ready, willing and able to work creatively with Skagit Treaty Tribes to improve riparian and other critical habitat through innovative programs designed to elicit landowner participation, and is also willing to

deep interest in ensuring that large-scale habitat projects actually get done, provide benefit, and don't cause new problems, and, to that end, has a right and interest in ensuring their successful completion as well as long-term management. The task at hand is to carefully and thoughtfully thread together habitat and farmland, both of which are indispensable to our interests and needs.

From our perspective, SCL contributing a regionally equitable salmon investment in the Skagit and allowing Skagit Tribes to guide its deployment will help avoid the conflict in the Skagit that has characterized the past 25 years. As Skagit County's various filings and correspondence with Seattle leadership to date reflect, Skagit County has been advocating this approach since the outset of our participation in the FERC process.

We acknowledge that in the absence of some better result, the ILP process must continue on schedule, and the tribes and resource agencies must work hard to build a record demonstrating the fact that the SCL Skagit Project has significant impacts on fisheries that must be mitigated. Skagit County places its trust in our tribal and resource agency partners to continue providing sound, objective science regarding the impacts of the SCL dams, and to seek appropriate mitigation that will improve the dire situation Skagit fisheries now face.

We also stand with the Upper Skagit Indian Tribe in asking that SCL study removal of Gorge Dam, as it is only fair that all costs and benefits be objectively weighed and balanced in assessing the appropriate pathway toward salmon recovery and cultural healing in the Upper Skagit. At our recent meeting, SCL flatly took study of Gorge Dam removal off the table, which, in our view, reflects a sense of entitlement that Seattle's interests in the Skagit River, without any need for analysis, inherently outweigh those of the Upper Skagit Indian Tribe. In our view, this demonstrates a profound lack of respect for the expressed wishes of the Skagit Treaty Tribe that has occupied and fished the Upper Skagit Valley for some 10,000 years. NEPA would seem to require this analysis in any event.

discuss potential mandatory measures to the extent reasoned and warranted. With climate concerns always on our minds, programs that involve the subsidized planting of productive trees could incentivize the kind of willing and enthusiastic landowner participation that is ultimately required in effectively navigating the transition zone between human-managed and wild spaces. With respect to water rights, Skagit County sees this as a past issue, and will, consistent with *Hirst*, continue to refer to the 2001 Skagit Instream Flow Rule in making land use decisions. We remain concerned that depriving Skagit farmers of irrigation water is causing significant hardship with little environmental benefit. However, it is our understanding that this issue is being addressed in the context of the Joint Legislative Task Force. We also applaud 40th Legislative District Representative Debra Lekanoff's proposed HB 1117 legislation, which has put at the forefront of our minds the important concept of Net Ecological Gain, and, also, the difficult and possibly irreconcilable tension between Treaty-protected resources and a societal/economic model ultimately based on the notion of perpetual growth. We look forward to working with our Tribal partners, locally, as the people of the Skagit, to work through this issue in good faith.

We appreciate that SCL does not want to talk about the economics, but this is a 50-year license, and our great-grandchildren will be living with whatever happens here, just as most natural resource issues and conflict in the Skagit for the past 25 years can be traced to SCL's current FERC license.

For our part, because it is in the interests of the resource and our community to do so, we will continue to publicly advocate for environmental equity in the Skagit, and a more cooperative path than is currently occurring. This should not be construed as hostility to Seattle, but rather an honest desire to improve what has previously been occurring.

As such, we urge SCL to consider a policy dialogue independent of the technical discussions now occurring in the context of the adversarial ILP process, one aimed at bringing the Skagit Valley together around a plan. This should not be done in secrecy or with eye toward maintaining an inappropriate level of outside control over the Skagit Valley and its people, but rather transparently and in a spirit of shared sacrifice. This is in part because the City of Seattle and Skagit County government are both public entities, and we are obligated to work that way. But more importantly, it is because a true solution will be one that our community can broadly understand and accept. Few good environmental outcomes are otherwise.

Ultimately, what we are asking is that the people of Seattle begin contributing to the Skagit through their power rates at the same level as the people of the Skagit. We also see this as a once-in-a-lifetime opportunity to bring our community together around a consensus-based plan for salmon recovery in the Skagit. This is a time for resort to the better angels of our nature, and we are hopeful that the people of Seattle will join us on this journey.

Very Truly Yours,



Will Honea

cc: Steve LeCuyer
David Hawkins
Kehl Vanwinkle