



## SKAGIT COUNTY BOARD OF COMMISSIONERS

RON WESEN, First District  
PETER BROWNING, Second District  
LISA JANICKI, Third District

March 3, 2021

Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**RE: Skagit River Hydroelectric Project (FERC No. 553-235)**  
***Skagit County's Comments on Seattle City Light's Proposed Study Plan***

Please accept these comments on Seattle City Light's Proposed Study Plan dated December 8, 2020, related to Seattle City Light's application seeking a new FERC license for its Skagit Hydroelectric Project (the "Project").

### **I. Introduction.**

Skagit County is the government of general jurisdiction in the entirety of the inhabited Skagit Valley downstream of the Project, and is legally responsible for comprehensive land use and shoreline planning in the Skagit. In concert with our junior taxing districts, we provide services and infrastructure to a diverse population of approximately 132,000, including four federally-recognized Indian tribes.

Consistent with our community's right of self-determination, our Comprehensive Plan explicitly declares our commitment to the preservation of our existing natural resource land base and economy – farming, fisheries and forestry – a task made considerably more challenging by tremendous development pressure from surrounding urban areas such as Seattle.

A core objective of our comprehensive planning has been to preserve the Skagit Valley's farmland, which feeds people across the country and is visited by tens of thousands of Seattle residents each year. We have only been able protect our natural resource land base by severely restricting the kind of extensive commercial development that Seattle has attracted with some of the nation's lowest power rates, instead adopting some of the nation's most restrictive farmland and forestry zoning.

Overarching all of this, pursuant to the 1855 Treaty of Point Elliott, the three Skagit Treaty tribes – Upper Skagit, Sauk-Suiattle and Swinomish – peaceably relinquished their claim to the Skagit land base on condition that harvestable levels of salmon and steelhead would continue to exist forever, allowing the tribes to carry on their fishing culture in perpetuity. This federally protected Treaty right is a judicially recognized servitude on the entirety of the Skagit ecosystem and a collective national obligation, requiring all those with an impact on the Skagit and its fisheries to reasonably carry their weight.

While our comments that follow are grounded in and entirely justified by the Federal Power Act standing alone, we ask the Commission to take note of our collective national obligations under the 1855 Treaty of Point Elliott, and principles of equity.

**II. Skagit County’s Mitigation Lands Study Request Is Required By The Federal Power Act and NEPA To The Extent Seattle’s Opportunistic Mitigation Land Acquisition Activity Is To Continue.**

Since 1995, Seattle City Light (“Seattle”) has purchased approximately 3,300 acres of land in Skagit County as principal mitigation for the Project’s fisheries impacts. Availing itself of its right as a municipal entity under state law to remove mitigation land from local tax rolls, Seattle has resultantly shifted a nearly \$4 million property tax burden to other landowners in Eastern Skagit County. Much of the mitigation land was already effectively protected from development through local zoning and other environmental regulations, and Seattle’s land acquisition program, from our perspective, has furnished marginal benefit to fisheries. It is also worth observing that much of the land Seattle has acquired is zoned for productive agriculture and forestry. We note that Skagit County government did not consent to Seattle’s mitigation lands acquisition program in the first place.

Seattle’s mitigation land acquisition program has effectively allowed Seattle to avoid the much-higher level of salmon investment imposed on other hydroelectric operators around the Pacific Northwest that have been licensed by the Commission since 1995, with Seattle spending a mere \$12 million on its mitigation land/ habitat program since 1995, equating to \$16k/mW on the 711 mW Skagit Project – approximately 37 times less than the regional average of \$623,911, and approximately 59 times less than the \$1 million/mW that Puget Sound Energy was required to spend on the Baker River system pursuant to its 2008 FERC license, which Skagit County citizens are repaying through our local power rates.<sup>1</sup> It is in light of this vast discrepancy in financial commitment to resource protection that we ask the Commission to consider Seattle’s response to the license participants’ study requests with reference to 18 C.F.R. § 5.9(b)(7).

Since Seattle’s last Project license, three Skagit anadromous species (Chinook, Steelhead, Bull Trout) as well as Southern Resident Killer Whales (SRKW) have been listed under the U.S. Endangered Species Act, with other species trending toward ESA listing and fishery closures increasingly the norm.

---

<sup>1</sup> See, Dam FERC License Spending Comparison, copy attached as **Exhibit A**.  
Page | 2

Skagit County and its citizens have done a tremendous amount to shoulder our share, bearing the intertwined burden of regulations that heavily impact farming and forestry; locally-funded habitat improvement; and the large-scale conversion of the productive land base, all in the interest of anadromous species restoration. This is in addition to the unacceptably inequitable contribution to anadromous species restoration now being repaid through our local power rates. From our perspective, it should not be the case that our own local power utility, Puget Sound Energy, is contributing 59 times as much to Skagit salmon as Seattle, and it is extraordinarily difficult to see environmental justice in this ratio.

**In light of the foregoing, it is squarely in our community's interest to ensure that all Skagit River system hydroelectric operators are contributing equitably to our collective fisheries and Treaty rights obligation. We believe that mitigation pursued to that end must demonstrably achieve beneficial results, in order to serve our collective interest in protecting Skagit fish and Skagit farms.**

In the course of the current FERC relicensing process, Seattle made clear to us its intention to continue purchasing Skagit Valley land as its principal fisheries mitigation strategy under the next license. Accordingly, on October 23, 2020, Skagit County filed a Mitigation Lands Study Request with the Commission, seeking to analyze whether Seattle's mitigation land acquisitions are generating benefit to fisheries that would justify the other costs and burden to our community, with an eye toward informing any potential future acquisitions. We established the proposed study's need and nexus in a manner fully consistent with 18 C.F.R. § 5.9. Seattle summarily rejected our mitigation lands study request, failing to explain the basis for its rejection as required by 18 C.F.R. § 5.11(b)(4).

To the extent that Seattle intends to continue opportunistically buying Skagit Valley land as principal mitigation for its fisheries impact under the next license, the Commission must require consideration of whether another 50 years of Seattle's fisheries mitigation strategy, now 25 years old, is a sound idea when all environmental costs and benefits are rationally considered.<sup>2</sup> As we have previously commented, this analysis is also required by the National Environmental Policy Act. *See*, 42 U.S.C. 4332(B).

**III. Skagit County Supports The Skagit Tribes, Federal Agencies and State Agencies In Seeking Comprehensive Analysis Of The Feasibility Of Fish Passage and Habitat Improvement Above Seattle's Dams.**

Seattle is being asked to consider the feasibility of fish passage over and anadromous habitat above its three Skagit dams, as reflected in the various study requests and comments submitted to the Commission by the Upper Skagit Indian Tribe, Swinomish Indian Tribal Community, Sauk-Suiattle Tribe, National Marine Fisheries Service, U.S. Fish & Wildlife Service, National Parks Service, Washington Department of Fish and Wildlife, Washington Department

---

<sup>2</sup> If Seattle is *not* intending to continue its mitigation land acquisition program under the next FERC license, then we concede that our mitigation lands study request is unnecessary and agree that concerns as to existing Seattle mitigation lands can be appropriately dealt with through a management plan incorporated in a Settlement Agreement. In other words, a mitigation lands study is only necessary to the extent that Seattle intends to perpetuate the *status quo* under the next license.

of Ecology and many others. These same entities also ask that Seattle study the Project's impacts on process flows, geomorphology and riverine habitat, from Seattle's Skagit dams downstream to Skagit Bay, a mere 75 river miles in total. Skagit County previously endorsed these requests as set forth in our prior filings. We continue to support these requests.

None of these questions have been fully and credibly studied since the construction of the Skagit dams began in 1919, despite significant dam-caused impacts apparent to most informed observers, as reflected by stakeholders' filings.

As to downstream impacts, Seattle intends to generally rely on existing information.

In response to stakeholders' upstream study requests, Seattle contends that habitat above the Skagit dams need not be studied, because, Seattle argues, Skagit anadromous species never travelled upstream of Seattle's dams. While unable to point to any single natural feature that would block anadromous species (such as a waterfall), Seattle instead asserts that the totality of rapids and large boulders, most of which are currently underneath Seattle's dams and reservoirs, was, taken as a whole, too much for anadromous species to navigate.

In making this convenient assertion, Seattle relies on information that largely amounts to hearsay, selectively curated by Seattle over the course of many decades, cemented into the public consciousness by an extensive public information campaign. From our perspective, this deeply-held narrative is an inadequate substitute for the legitimate scientific inquiry required by federal law.

For their part, the Skagit Tribes and resource agencies have furnished substantial evidence that no conclusive barrier prevents anadromous species' usage of the upper 37% of the Skagit River – other than Seattle's three dams.

Seattle seems to be asserting that Skagit Tribes and resource agencies must prove Seattle's narrative wrong beyond a reasonable doubt in order to invoke study of the feasibility of passage and habitat above Seattle's dams, which could involve the construction of systems like Puget Sound Energy was required by its FERC license to install and operate on the Baker River, a Skagit tributary.

Seattle's characterization of the issue appears to be inconsistent with controlling law on the subject, which instead suggests the relevant question is whether fish passage and habitat improvement above the three Skagit dams can feasibly mitigate for the totality of the dams' impacts. See, *Confederated Tribes and Bands of Yakima Indian Nation v. FERC*, 746 F.2d 466, 470-71, (9<sup>th</sup> Cir 1984)(quoting *Udall v. FERC*, 387 U.S. 428, 440 (1967)(The law, then, is well defined: Prior to issuance of a new license, FERC must study the effect of a project on the fishery resource and consider possible mitigative measures.)

Contrary to Seattle's assertion, the question is not properly centered on an exploration of the perceived condition of the Skagit at the precise moment over a century ago that Seattle shut off the Skagit's flow in order to construct its first dam. Rather, it must be an analysis focused on the continuing impacts of the Project. See, *American Rivers v. FERC*, 895 F.3d 32, 46 (DC Cir. 2018)("[T]he Fish and Wildlife Service acted arbitrarily in establishing the

environmental baseline without considering the degradation to the environment caused by the Coosa River Project's operation and its continuing impacts.")

This concern is particularly pointed given the multiple ESA listings involved in the Skagit, listings that impact our entire community. *American Rivers v. FERC*, 895 F.3d at 47 (“[A]ttributing ongoing project impacts to the ‘baseline’ and excluding those impacts from the jeopardy analysis does not provide an adequate jeopardy analysis. The Opinion’s jeopardy analysis is arbitrary in failing to account for the impact of continued operations of the existing dams.”)

Skagit County supports the Skagit Tribes and resource agencies in their request to study the feasibility of passage over and below the three dams, as well as the viability of habitat and related improvements above the dams, a mechanism proven successful in other locations to mitigate for the various fishery impacts that dams inevitably create. Anadromous species in the Pacific Northwest have survived millennia of geologic upheaval through their astounding ability to colonize habitat, and, given the condition of Skagit anadromous species, we believe that exploring this possibility in the public lands above Seattle’s dams is squarely in the public interest.

Seattle has recently agreed to study fish passage and upstream habitat, *so long as Seattle controls the study as its lead investigator*.<sup>3</sup> It would be extraordinarily difficult for our community to view this as a credible and unbiased study, something we feel is important for the Commission to ensure.

Seattle has spent many decades and considerable resources undermining the idea that the Skagit above Seattle’s dams is suitable for anadromous species, and it defies reason to suggest that Seattle should now lead and control what is supposed to be an objective analysis of that very question. Accordingly, we respectfully request that the Commission require federal agency and tribal co-lead participation in all studies of fish passage and habitat above Seattle’s dams.

#### **IV. Flood Timing Study Request.**

We endorse the Flood Timing Study Request dated September 15, 2020, filed with the Commission by the Skagit County Diking and Irrigation District Consortium (“**SDIDC**”) and the Skagit County Dike and Drainage District Flood Control Partnership (“**Partnership**”), and request that it be required in the Final Study Plan. This study, which is intended to supplement SCL’s proposed Operations Model Study Plan, will incorporate trend analysis to analyze and respond to the effect of climate change on inflows to the Project and consider alternative scenarios, all of which may have significant impacts on our community. Collectively, the SDIDC and the Partnership provide flood protection for the Cities of Burlington, Mount Vernon, and La Conner, and protect the water supply for the City of Anacortes, Oak Harbor, and Naval Air Station Whidbey.

---

<sup>3</sup> See, Seattle City Light’s “Skagit River Project Relicensing Study Planning – Issue Resolution Form: LP Requests for Investigation and Analysis of Fish Passage, dated February 23, 2021 (“City Light will be the lead investigator for the [fish passage] study.”)

**V. Irrigation Water Supply Study Request.**

We also endorse the Irrigation Water Supply study request dated October 19, 2021 filed with the Commission by SDIDC, which will explore the possibility of coupling instream flow augmentation to benefit aquatic habitat with much-needed irrigation water for Skagit Delta farmers. SDIDC represents twelve Drainage and Irrigation Improvement Special Purpose Districts in Skagit County. These special purpose districts oversee drainage and irrigation-related matters on over 60,000 acres of prime farmland in Skagit County, representing the substantial majority of the Skagit Valley's farmland. This study, which is also intended to supplement the proposed Operational Model Study Plan, has the objective of evaluating scenarios and feasibility of storing and releasing water for supplemental irrigation.

**VI. Conclusion.**

We thank you for the opportunity to comment on the Proposed Study Plan for the relicensing of the Skagit Project, and look forward to a renewed relationship between our community and the City of Seattle, based on principles of environmental justice, equity, and mutual respect.

Sincerely,

BOARD OF SKAGIT COUNTY COMMISSIONERS



LISA JANICKI, Chair



PETER BROWNING, Commissioner



RON WESEN, Commissioner

Cc: Senator Maria Cantwell  
Senator Patty Murray  
Representative Suzan Del Bene  
Representative Rick Larsen  
Governor Jay Inslee  
Jennifer Washington, Chair, Upper Skagit Indian Tribe  
Steve Edwards, Chair, Swinomish Indian Tribal Community  
Norma Joseph, Chair, Sauk-Suiattle Indian Tribe  
Mayor Jenny Durkin  
Seattle City Council  
Debra J. Smith, CEO, Seattle City Light

EXHIBIT A to Skagit County 3/3/2021 comment letter  
 COMPARISON OF REGIONAL SPENDING ON SALMON MITIGATION

FERC Project Name	River System	Owner	State	Public or Private	Settlement Year	Total Salmon Investment (\$)	Capacity mW	Salmon \$/mW	Fish Passage Survival
Baker River Project	Baker (Skagit)	Puget Sound Energy	WA	Private	2008	\$ 170,000,000	170	\$ 1,000,000	98.0%
Cushman	Skokomish	Tacoma Power	WA	Public	2009	\$ 25,000,000	185	\$ 135,135	98.0%
Rock Island	Columbia	Chelan County PUD	WA	Public	2002	\$ 316,000,000	624	\$ 506,410	93.0%
Rocky Reach	Columbia	Chelan County PUD	WA	Public	2002	\$ 510,000,000	1280	\$ 398,438	93.0%
Wanapum/Priest Rapids**	Columbia	Grant County PUD	WA	Public	2005	\$ 600,000,000	2048	\$ 292,969	93.0%
Wells	Columbia	Douglas County PUD	WA	Public	2002	\$ 188,000,000	840	\$ 223,810	96.4%
Pelton Round Butte***	Deschutes	Portland General Electric	OR	Private	2004	\$ 193,000,000	367	\$ 525,886	98.0%
Carmen-Smith	McKenzie	Eugene Water & Electric	OR	Public	2008	\$ 50,000,000	120	\$ 416,667	99.5%
Leaburg-Waltermville**	McKenzie	Eugene Water & Electric	OR	Public	2001	\$ 64,000,000	23	\$ 2,782,609	99.5%
North Umpqua	North Umpqua	Pacificorp	OR	Private	1997	\$ 86,000,000	185	\$ 464,865	98.0%
Cowlitz River	Cowlitz	Tacoma Power	WA	Public	2000	\$ 40,000,000	435	\$ 91,954	95.0%
Lewis River	Lewis	Pacificorp	WA	Private	2004	\$ 240,000,000	580	\$ 413,793	99.5%
Willamette Falls	Willamette	Portland General Electric	OR	Private	2004	\$ 13,800,000	18	\$ 788,571	98.0%
Clackamas River	Clackamas	Portland General Electric	OR	Private	2006	\$ 120,000,000	173	\$ 693,642	99.5%
<b>AVERAGE \$/mW</b>								<b>\$ 623,911</b>	
Skagit***	Skagit	Seattle City Light	WA	Public	1995	\$ 12,020,000	711	\$ 16,906	0.0%

\*\* two dams, combined

\*\*\* three dams, combined

Seattle Skagit Spending Since 1995

1990 Settlement Agreement pledge\*

ESA Program

**Total**

\$ 6,320,000

\$ 5,700,000

**\$12,020,000**

Regional Differential

Regional Avg vs SCL

PSE Baker vs SCL

multiple

multiple

\$ (607,005)

37

59

\*actual spending to date is ~\$5mm