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# **LAKE CHELAN OFFER of SETTLEMENT**

**Final**

**LAKE CHELAN HYDROELECTRIC PROJECT  
FERC Project No. 637**

**October 8, 2003**



**Public Utility District No. 1 of Chelan County  
Wenatchee, Washington**

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# **Lake Chelan Hydroelectric Project Offer of Settlement**

## **FINAL**

### **Introduction**

On October 8, 2003, Public Utility District No. 1 of Chelan County Washington (“Chelan PUD”) and participants in the alternative relicensing process for the Lake Chelan Project, FERC No. 637 (“Project”), reached final agreement on a comprehensive settlement (“Agreement”) of all matters addressed in the Lake Chelan relicensing process, including the water quality certification issued by the Washington Department of Ecology (“WDOE”) under Section 401 of the Clean Water Act on April 21, 2003. Pursuant to Section 8.1 of the Agreement and in conformity with the Commission’s Rules of Practice and Procedure, Rule 602 (18 C.F.R. § 385.602) Chelan PUD hereby submits this Offer of Settlement to the Commission for review and incorporation of the proposed license articles in Attachment A of the Agreement into the new license for the Lake Chelan Project. The development of the Agreement, its submission to the Commission, and this request to incorporate the agreed upon license conditions into the new license are in accord with the alternative relicensing procedures described by the Commission in its Order 596, Regulations for Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997) and meet the goal of resolving relicensing issues through a collaborative process involving affected federal and state agencies and other stakeholders.

### **Background**

On May 8, 1926, the Federal Power Commission (“FPC”) issued a 50-year license authorizing the construction of the existing Project to replace the dam and powerhouse constructed in 1906. The Lake Chelan Dam was completed and become operational in 1928. On May 12, 1981, the Federal Energy Regulatory Commission (“FERC”), the successor to the FPC, issued Chelan PUD a new 30-year license for the Project, but made the license retroactive to 1974. That license is due to expire on March 31, 2004.

On July 6, 1998, FERC approved Chelan PUD’s request to use the collaborative alternative relicensing procedures for the preparation of its license application, and to use an applicant-prepared preliminary draft environmental assessment in lieu of the Exhibit E environmental report. As part of the collaborative process, a total of 115 working group meetings and 39 full relicensing meetings were held between April 1998 and March 2002. Chelan PUD then filed an application for a new license for the Project with FERC on March 28, 2003, and an application with WDOE for a Section 401 certification on March 27, 2002. Both applications were developed by Chelan PUD in cooperation with interested agencies and stakeholders. Settlement discussions utilizing a professional facilitator continued following the

submission of the applications for a new license and Section 401 certification, with an increasing focus on legal issues not previously resolved by technical staff from Chelan PUD and interested agencies.

Steady progress was made in settlement discussions and on December 13, 2002, Chelan PUD and the federal and state agencies intervening in the Lake Chelan Project relicensing proceeding wrote FERC Chairman Pat Wood III to request that the Commission delay the issuance of the final environmental assessment (FEA) until after the parties had submitted a comprehensive settlement agreement. The parties indicated that there was a high potential that a settlement would be submitted by April 15, 2003. In a letter dated February 5, 2003, Chairman Wood granted the request for a delay in the issuance of the FEA. Intensive negotiations continued in January through April 2003 and in early May, Chelan PUD believed final agreement had been reached with all parties. However, one agency party determined an issue of concern to them had not been properly resolved. Chelan PUD and the remaining agency worked from May through September 2003 to resolve this remaining issue and on October 8, 2003, final agreement was reached. The following parties signed on to the comprehensive settlement: Chelan PUD, the USDA Forest Service, the National Park Service (“NPS”), the NOAA Fisheries, United States Fish and Wildlife Service (“USFWS”), the Washington Department of Fish and Wildlife (“WDFW”), the Washington Department of Ecology (“WDOE”), the Confederated Tribes of the Colville Reservation (“CCT”), American Whitewater Affiliation (“AWA”) and the City of Chelan.

## **Offer of Settlement**

The product of the process described above is the Lake Chelan Project Settlement Agreement, including Attachment A, Proposed License Articles, and Attachment B, the Lake Chelan Comprehensive Plan, which encompasses the issuance of a new license for the Project by FERC and the Section 401 certification issued by Ecology. The Agreement establishes measures for the protection, mitigation and enhancement of resources affected by the Project under a new license to be issued by FERC and the Section 401 certification issued by WDOE. It also specifies procedures to be used by the parties to ensure the implementation of the license articles contained in the new license, consistent with this Agreement. It is the intent of the parties to establish a framework for future collaborative efforts for the protection, mitigation and enhancement of the resources affected by the Project, including Lake Chelan and the bypassed reach of the Chelan River.

Section 17 of the Agreement states that the parties entered into the agreement with the express condition that the Commission issue a new license in conformance with the Agreement. If the Commission issues a new license that is materially inconsistent with any provision contained in the Agreement the parties may withdraw from the Agreement. The parties have drafted the Agreement, including the proposed license articles, bearing in mind the Commission’s policies regarding such matters. Therefore, the parties are confident that the Commission will be able to issue a new license that is conformance with the Agreement with no material changes.

## **Explanatory Statement**

This offer of settlement provides for a wide range of protection, mitigation and enhancement measures for the resources affected by the Lake Chelan Project. In particular, the settlement restores flows to the bypassed reach of the Chelan River, which has been dry for most of the year for the past 76 years. In the lowest portion of the bypassed reach, the Agreement would significantly enhance salmon and steelhead trout spawning habitat. The Agreement also provides for erosion control measures, the placement of large woody debris, measures to control dust at the head of Lake Chelan in the community of Stehekin, the replacement of survey monuments, tributary barrier removal, fish stocking, a revised lake level regime, wildlife habitat restoration, historic properties and cultural resources protection, recreational resources, a means of addressing unforeseen resource needs, and other measures and requirements.

The agency parties to the Agreement have agreed to support a license term of 45 years and not to oppose a license term longer than 45 years. Chelan PUD requests that the Commission issue a 50-year license.

Chelan PUD believes that a 50-year license is justified because the Settlement Agreement provides for extensive enhancement measures. These measures are particularly extensive for a project of this size (48 MW) and lack of complexity (e.g. a natural lake without anadromous fish). Furthermore, the Project was relicensed by the Commission in 1981 and is the first hydroelectric project to go through the relicensing process twice.

Notwithstanding the varied interests of the parties, this Agreement gained the support of all entities that fully participated in the alternative licensing process. The list of signatories provides ample evidence of the comprehensive nature of this Agreement. The parties to the Agreement concur that the Offer of Settlement is in the public interest and the record developed to date in this proceeding (and provided in the Comprehensive Plan) strongly supports the protection, mitigation and enhancement measures contained in the Agreement and license articles.

## **Enclosures**

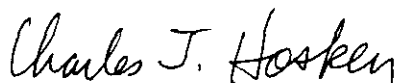
Attached as part of this Offer of Settlement are the Settlement Agreement executed by the parties, Attachment A – the Proposed License Articles, and Attachment B - the Lake Chelan Comprehensive Management Plan.

## **Conclusion**

The Offer of Settlement is clearly in the public interest. Therefore, Chelan PUD respectfully requests that the Commission approve the Offer of Settlement and incorporate the proposed license articles in Attachment A of the Settlement Agreement into a new license for the continued operation of the Lake Chelan Project.

Respectfully submitted,

PUBLIC UTILITY DISTRICT. NO. 1  
of CHELAN COUNTY, WASHINGTON



Charles J. Hosken  
General Manager

Enclosures

cc: Lake Chelan Settlement Group

## Certificate of Service

I hereby certify that I have this day served the foregoing document electronically and by first class mail upon each party identified in the official service list compiled by the Secretary in this proceeding.

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*Offer of Settlement*

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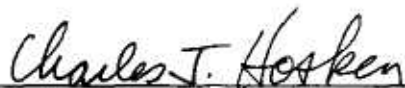
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Dated at Wenatchee, Washington, this 16 day of October, 2003



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