



Public Utility District No. 1 of Douglas County

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October 24, 2008

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

Re: Public Utility District No. 1 of Chelan County, Washington
Rocky Reach Project No. 2145-060

Dear Secretary:

Public Utility District No. 1 of Douglas County, Washington (“Douglas PUD”), licensee of the Wells Hydroelectric Project No. 2149, respectfully submits these comments in support of the Comments of Public Utility District No. 1 of Chelan County, Washington (“Chelan PUD”) filed October 10, 2008, requesting the Federal Energy Regulatory Commission (“FERC” or “Commission”) to provide a 50-year license term for the new license for the Rocky Reach Project No. 2145. For the reasons set forth in Chelan PUD’s comments, Douglas PUD believes that a 50-year term is supported by the record developed in the Rocky Reach relicensing proceeding, including the terms of the settlement agreement filed therein, and is fully consistent with Commission policy. Douglas PUD strongly believes that the term of the new license for the Rocky Reach Project, as well as the one that will soon be considered for the Wells Project, should be determined on the basis of the record developed in the relicensing proceeding for each project and should not be pre-determined by a decision made in the Priest Rapids proceeding.

Chelan PUD filed its Comments because the Commission’s order issuing a new license to Public Utility District No. 2 of Grant County, Washington (“Grant PUD”) for the Priest Rapids Project No. 2114¹ indicates that the term of the new license for Priest Rapids was selected to facilitate coordination of the future relicensing proceedings for the Priest Rapids, Rocky Reach and Wells projects. The Priest Rapids license order specifically tied the term of the Priest Rapids license to the 2052 expiration date for the Habitat Conservation Plans (“HCPs”) for the Rocky Reach, Rock Island and Wells projects and the selection of a 44-year term expiring in the same year further strongly suggest that the terms of the new licenses for both Rocky Reach and Wells may have been pre-determined in the Priest Rapids proceeding.

Douglas PUD is preparing a new license application for the Wells Project in accordance with the Integrated Licensing Process (“ILP”), which will be filed in 2010. Similar to Chelan PUD and as

¹ Public Utility District No. 2 of Grant County, Wash., 123 FERC ¶ 61,049 at PP 182-187 (2008).

stated in the Pre-Application Document (“PAD”) for the Wells Project, Douglas PUD intends to seek a 50-year term for the Wells new license.² Douglas PUD is engaged in substantial studies and consultations with the resource agencies and tribes to develop a full record in support of this objective. Douglas PUD is also involved in discussions with the agencies and tribes in an attempt to resolve as many issues as possible through settlement agreements. These settlement agreements as well as the Wells Project Anadromous Fish Agreement and Habitat Conservation Plan, all envisioned a long-term 50-year license for the Wells Project. As Chelan PUD points out in its filing, the “Policy Statement on Hydropower Licensing Settlements” looks with favor on settlements. Consistent with this policy, the Commission has recognized the importance of honoring license term provisions within settlement agreements.

Douglas PUD strongly believes that the term of the new license for both the Rocky Reach and Wells projects should be determined, like other issues specific to each project, on the record developed in each unique relicensing proceeding, including providing consistency with settlement agreements that have been executed and filed with the Commission. Given the substantial efforts exerted to achieve the Rocky Reach settlement and underway in the Wells ILP, it makes little sense to pre-determine such a significant issue on the basis of a general desire to “coordinate” future relicensing proceedings. Specifically, since the relicensing of the Wells Project will not occur for several years, it is not appropriate to bind a future Commission’s discretion to decide significant issues based upon the context of the record before it.

The reliance in the Priest Rapids order on the fact that the Rocky Reach and Wells HCP will terminate in 2052 is inappropriate. Section 1.5 of the Rocky Reach HCP and Section 2.5 of the Wells HCP each provide that, following expiration of the HCP agreements in 2052, the respective PUDs shall continue to implement the last agreed to measures until the FERC orders otherwise. Therefore, the Plan Species covered by the HCP will continue to receive the same level of protection as afforded within the HCPs until FERC orders otherwise under its reserved authority. Therefore, we submit that there is no need to limit the term of the new license for the Rocky Reach or Wells projects to be coextensive with the HCP expiration.

Shortening the term of the new license for Rocky Reach or Wells, based upon the termination of the HCP, would have the perverse effect of punishing Chelan and Douglas PUDs for having proactively entered into innovative and comprehensive conservation plans intended to contribute to the recovery of Plan Species affected by the Rocky Reach and Wells projects.

Douglas PUD also takes issue with the suggestion in the Priest Rapids relicensing order that the Wells Project is “nearby” Priest Rapids. It is in fact 100 miles from Wanapum Dam and 118 miles from Priest Rapids Dam. The upstream location, which is above three tributaries supporting anadromous and resident fish species, suggests that there would be little if any benefit to be gained from a coordinated (and likely extraordinarily complex) relicensing process involving all five dams. Ironically, the closest project to Priest Rapids is Rock Island, and as Chelan PUD explains, linking the expiration of the Priest Rapids Project to Rocky Reach and Wells projects for purposes of coordination of the Mid-Columbia projects is impossible because

² PAD at 4.

the Rock Island Project license does not expire until 2028 and the Commission may not issue a license for a term less than 30 years, thus defeating the purpose of coordination.

The Priest Rapids relicensing order also relies on the Commission's policy statement on the use of reserved authority to ameliorate cumulative impacts as the basis for coordinating the license expiration dates of the projects in the mid-Columbia River Basin.³ According to this policy statement, the purpose of such coordination is to "maximize future consideration of cumulative impacts" in contemporaneous proceedings. However, in the context of Wells, Rocky Reach and Rock Island projects, there is likely to be little need to "maximize" such consideration, because each project has an HCP in effect, which establishes the objective of No Net Impact for each Plan Species affected by the project. Since three of the four licensed projects in the basin are already committed to this objective, it seems very unlikely that there will be any cumulative impacts worthy of such "maximum" consideration, and hence the need for coordinated expiration of the Wells and Rocky Reach licenses with Priest Rapids is lacking.

Finally, support for a 50-year license term was and is a key objective for both Chelan and Douglas PUDs in settlement discussions involving relicensing. If that objective is placed in doubt as a result of the Commission's statements in the Priest Rapid proceeding, Chelan PUD's settlement is placed in jeopardy and Douglas PUD's incentive to negotiate long-term settlements will be substantially reduced.

In summary, Douglas PUD recommends that the Commission establish a term of 50 years for the new license for Rocky Reach in accordance with the recent Comments of Chelan PUD. In addition, Douglas PUD requests the Commission to acknowledge that the term of the new license for the Wells Project should be determined on the record in the Wells relicensing proceeding and that coordination of license expiration dates for three of the four mid-Columbia River projects is unwarranted.

Yours truly,



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³ 18 C.F.R. § 2.23 (2008).