

ROCKY REACH OFFER of SETTLEMENT

Final

**ROCKY REACH HYDROELECTRIC PROJECT
FERC Project No. 2145**

February 3, 2006



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

Rocky Reach Hydroelectric Project Offer of Settlement

FINAL

Introduction

On February 3, 2006, Public Utility District No. 1 of Chelan County Washington (Chelan PUD) and participants in the alternative relicensing process for the Rocky Reach Project, FERC No. 2145 (Project), finalized a Comprehensive Settlement Agreement (Agreement). The Agreement encompasses all matters addressed in the Rocky Reach relicensing process, including the water quality certification, which is expected to be issued by the Washington Department of Ecology (Ecology) in March, 2006 under Section 401 of the Clean Water Act, as well as the Biological Opinions to be issued under the Endangered Species Act by NOAA Fisheries and the U.S. Fish and Wildlife Service. Pursuant to Section 8 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 (Attachment A of the Agreement) into the new license for the 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 accordance 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 stakeholders.

Background

The initial license application for Project No. 2145 was filed January 13, 1956. The license was issued by order dated July 11, 1957, and made retroactive to July 1, 1956. The Rocky Reach Dam commenced operation in 1961 with seven generating units. On September 1, 1966, Chelan PUD filed an application with the Federal Power Commission to amend the Project license for the addition of four generating units. The Federal Power Commission issued the license amendment May 23, 1968. The second phase of construction began April 22, 1969, and was completed December 1, 1971. Eight applications to amend the initial license have been approved since 1956, the most recent being incorporation of the Rocky Reach Anadromous Fish Agreements and Habitat Conservation Plan (HCP).107 FERC ¶ 61,281. The original license expires on June 30, 2006.

On October 25, 1999, 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 65 working group meetings and 33 full relicensing meetings were held between 1999 and 2003. Chelan PUD then filed an application for a new license for the Project with FERC and an application with Ecology for a Section 401 Water Quality certification on June 29, 2004.

On February 6, 2006, Chelan PUD withdrew its Section 401 Water Quality certification application for the second time (Chelan PUD first withdrew its application on June 13, 2005 while negotiations of a Agreement progressed) so that logistical issues pertaining to coordination with the final Agreement could be addressed by Settlement Parties.

In settlement group meetings held during 2004 and 2005 substantial progress was made in the negotiation of an Agreement regarding a new license for the Project, including substantial progress in resolving the relevant water quality issues. An Agreement was completed on February 3, 2006.

Offer of Settlement

The product of the process described above is the Rocky Reach Comprehensive Settlement Agreement, including Proposed License Articles (Attachment A) and the Rocky Reach Comprehensive Plan (Attachment B). 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 to be issued by Ecology. It also specifies procedures to be used by the Parties to ensure implementation of the new license articles, consistent with this Agreement. Importantly, the Agreement proposes to incorporate the Project's recently-approved HCP into the new license as the agencies' terms and conditions and prescriptions for spring Chinook and steelhead, summer and fall Chinook, sockeye and coho salmon (Plan Species).

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. The Agreement creates a Rocky Reach Policy Committee, a Rocky Reach Recreation Forum, a Rocky Reach Wildlife Forum, a Rocky Reach Cultural Forum, and a Rocky Reach Fish Forum (RRFF). The RRFF is responsible for sharing information, coordinating efforts and making recommendations regarding implementation of license measures pertaining to fish species not covered by the HCP. The HCP Coordinating Committee¹ remains the appropriate forum for resolving matters related to HCP-covered species; however, the settlement Parties anticipate that the RRFF will coordinate appropriately with that body.

The Parties entered into this Agreement under the condition that the Commission issues a new license in conformance with the Agreement. Section 16 of the Agreement outlines how the Parties may withdraw if the Commission issues a new license that is materially inconsistent with any provision contained in the Agreement.

Explanatory Statement

This Offer of Settlement provides protection, mitigation and enhancement measures for shoreline erosion, water quality, white sturgeon, bull trout, Pacific lamprey, resident fish, wildlife, cultural

¹ The HCP Coordinating Committee is established under Section 4.1 of the Rocky Reach Anadromous Fish and Habitat Conservation Plan.

resources, and recreation resources. It also, as described above, provides for the incorporation of the Rocky Reach HCP into the new license to address Plan Species. Chelan PUD requests that the Commission issue a 50-year license. A 50-year license is justified because the Agreement provides for extensive enhancement measures, with estimated expenditures of approximately \$394 million dollars.²

The Offer of Settlement largely reflects the recommendations of FERC staff in the Draft Environmental Impact Statement issued by the Commission on August 31, 2005. As Commission staff will recall, however, several items of particular importance to local stakeholders were not recommended by FERC staff. Chelan PUD would like to take this opportunity to explain to the Commission how the Settlement Group addressed the proposed Recreation Enhancement Fund and Wildlife Habitat funding license articles in the final version of the Agreement.

Recreation Enhancement Fund. This item was removed, per Commission staff's recommendation, and replaced with an alternative that the Settlement Group hopes will meet with the Commission's approval. The Recreation Resources Monitoring and Evaluation Program would replace the REF. Under this approach, Chelan PUD, in consultation with the Rocky Reach Recreation Forum, would review and evaluate information with respect to existing and potential recreational use within the Project boundary every six years of the new license. A report would then be made to the Commission, consistent with FERC Form 80 requirements. Additionally, Chelan PUD would make available, upon receipt of the new license, an initial amount of \$500,000 to fund identified and approved recreational projects within the Project boundary. Through this process, Chelan PUD could request that the Commission amend the new license to allow Chelan PUD to fund additional measures to address specific recreation needs, within the Project boundary, as identified through the monitoring and evaluation program. Chelan PUD is confident that this approach addresses the Commission staff's concerns about funding items outside the Project boundary and committing funding for unspecified future expenditures.

Wildlife Management Plan. The Settlement Agreement contains provisions for funding and implementing a Rocky Reach Wildlife Management Plan as part of the Comprehensive Settlement Agreement. Commission staff made a preliminary recommendation in their DEIS not to include certain measures of the Wildlife Management Plan. The Settlement Group was unable to identify alternative opportunities for providing adequate protection, mitigation, and enhancement measures for wildlife within the Project boundary, and, therefore, continues to support the proposed wildlife measures to restore, maintain, and improve the Chelan Wildlife Area (CWA) lands for key indicator wildlife species.

As part of the Wildlife Management Plan, Chelan PUD has agreed to provide a 50-foot shoreline easement to protect riparian habitat on its Sun Cove property as one measure to maintain habitat for key wildlife indicator species. However, the majority of this 160 acre parcel has relatively low value for upland wildlife because it is surrounded by orchards and residential development. Therefore, the Settlement Group elected to focus measures for wildlife on the Chelan Wildlife

² This estimate includes expenditures related to HCP implementation, juvenile fish bypass system construction, and two prospective rebuilds of the juvenile fish bypass during the term of the new license.

Area lands where protection, mitigation, and enhancement measures would be the most effective. WDFW's FPA Section 10(j) recommendation asking FERC to require the entire Sun Cove property to be held in a conservation easement is inconsistent with the Settlement Group's decision to include the proposed measures to restore, maintain, and improve CWA lands. The previous rationale, combined with a lack of other protection, mitigation, and enhancement opportunities within the project boundary, favors the inclusion in the license of all measures in the Wildlife Management Plan, and the exclusion of a conservation easement for the entire Sun Cove property.

Conclusion

Notwithstanding the varied interests of the Parties, this Agreement gained the support of all entities that fully participated in the alternative licensing process.³ 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 Management Plan) strongly supports the protection, mitigation and enhancement measures contained in the Agreement and Proposed License Articles.

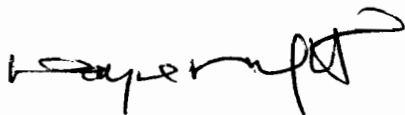
The Offer of Settlement is clearly in the public interest. Therefore, Chelan PUD respectfully requests that the Commission approve the Offer of Settlement and incorporate without modification the Proposed License Articles in Attachment A of the Settlement Agreement into a new license for the continued operation of the Rocky Reach Project.

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 Rocky Reach Comprehensive Management Plan.

Respectfully submitted,

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



Wayne Wright
Interim General Manager

³ Instead of signing this Agreement, NOAA Fisheries intends to submit a separate letter of support, since its jurisdictional interests are primarily addressed through the executed Rocky Reach Anadromous Fish Agreement and Habitat Conservation Plan.

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 complied by the Secretary in this proceeding.

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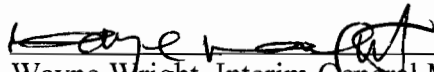
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