



Public Utility District No. 1 of Douglas County

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Via Electronic Filing

March 6, 2012

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

**Subject: Request for New License Term of 50 Years
Wells Hydroelectric Project No. 2149-152**

Dear Secretary:

Douglas County PUD respectfully requests that the Federal Energy Regulatory Commission (Commission) establish a term of 50 years for the new license for the Wells Project and conclude that a shorter term in order to coordinate relicensing with downstream projects is not warranted. Douglas PUD believes that such action is appropriate for the following reasons:

1. The extensive measures in the Wells HCP were intended to satisfy all of the anadromous fish requirements for the relicensing of the Project and were not required to address any obligation under the existing license; therefore, the HCP measures should not have been included in the No Action Alternative in the Final Environmental Impact Statement (FEIS) and Douglas PUD should receive full credit for such costs in establishing the term of the new license.
2. The incremental costs associated with implementing recently developed mandatory fish and water quality conditions contained within the Clean Water Act Section 401 certification should also be considered.
3. Douglas PUD's request for a 50-year term is supported by a strong environmental performance record, as evidenced by the highest anadromous fish survival rates in the Columbia Basin, and the proactive development of a series of relicensing settlements, including the Aquatic Settlement Agreement, containing strong resource agency and local government support for a 50-year license term.
4. Coordinated expiration of the Wells license with downstream projects is not warranted because the Wells Project has a minimal contribution to cumulative impacts, and because the resource agencies have raised strong objections to such coordination.

Together, these factors make it clear that a 50-year license is warranted based upon the extensive measures necessary to support relicensing, and that coordinating the Wells license expiration with downstream FERC-licensed projects would significantly complicate the relicensing proceedings for all three projects without providing any corresponding benefits.

Wells HCP Costs Should Be Excluded From the No Action Alternative and Afforded Full Credit in Assessing the Total Costs of Environmental Measures Necessary to Support Relicensing and Establish the License Term

The FEIS treated all of the costs of the Wells HCP, including current levels of funding (\$9.55 million per year) and new HCP measures (\$1.45 million per year), as part of the No Action Alternative in the FEIS. For purposes of the license-term evaluation, this incorrectly characterizes both the new and the current HCP costs as being part of the baseline for environmental costs when in fact the Wells HCP was developed specifically to satisfy the extensive relicensing requirements for salmon and steelhead. Total future HCP costs for the relicensed Wells Project are expected to average \$11 million per year starting in 2012. It is clear that development and approval of the HCP was not a requirement of the existing license, because all of the measures required under the current license for anadromous fish resources were previously determined by the 1990 Long-Term Fish Settlement Agreement, which was approved by the Commission and served as the basis for removing the Wells Project from the Mid-Columbia proceeding. The HCP was a voluntary commitment to augment and extend anadromous fish measures for a 50-year period that extends well beyond expiration of the current license and the 1990 Long-Term Fish Settlement Agreement. The relicensing record also confirms that the resource agencies have acknowledged this purpose and relied upon the HCP to satisfy applicable relicensing requirements such as Federal Power Act (FPA) sections 18 and 10 and Endangered Species Act (ESA) section 7.

The FEIS asserts that under the No Action Alternative the Project would continue to operate under the conditions of the existing license indefinitely, and that since the HCP is a part of that license the No Action Alternative should include all of the HCP measures (See FEIS at p. 17). Although the No Action Alternative is a required element of the NEPA analysis, it should be construed in a manner which properly recognizes an agency's authority and limitations consistent with established law.¹ Accordingly, the Commission should interpret the No Action Alternative consistent with the FPA prohibition on perpetual licenses and limitations on the Commission's authority. In view of this prohibition, the Commission lacks the authority to take no action upon the expiration of an initial license and thereby allow a project to continue operating under identical annual licenses indefinitely. It must either relicense the project or require a surrender of license and decommissioning of the project. To be consistent with such limitations, the No Action Alternative should recognize that toward the end of the license term, a licensee has a strong incentive to enter into new agreements, such as the HCP, to satisfy the requirements to obtain a new license. The fact that Douglas PUD entered into such an agreement prior to commencement of the ILP should not be used against it by including such measures

¹ See *Havasupai Tribe v. U.S. Department of Agriculture, Forest Service*, 752 F. Supp. 1471, 1491 (D. Az. 1990), affirmed 943 F.2d 32 (9th Cir. 1991), cert. denied 503 U.S. 959; *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291, 1320 (W.D. Wash. 1994); *Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454 (9th Cir. 1984).

within the No Action Alternative. Rather, the HCP should be seen for what it is – a new long-term commitment of sufficient scope to meet all of the anticipated obligations that apply on relicensing. Including the HCP within the No Action Alternative does not provide the proper benchmark to compare the magnitude of environmental effects of the action alternatives. Without the relicensing requirement, Douglas PUD would not have entered into the HCP and asked FERC to include it in the existing license. To provide the proper benchmark and maintain consistency with the FPA limitations, the appropriate No Action Alternative should be the continued operation of the Project under the terms of the 1990 Long-Term Fish Settlement Agreement.

National Marine Fisheries Service (NMFS) made it clear in its comments that it would be able to accommodate a 50-year term should the Commission, in its discretion, opt for a longer license term (as has been proposed by the settlement parties). NMFS has proposed a process that could extend the HCP measures (or augment such measures) for eight years beyond 2054, the current term of the HCP, in order to accommodate a new 50-year license. NMFS also indicated in its letter that the option to extend the HCP for Wells is based upon the fact that the Project has already achieved the passage and survival standards of the HCP, has achieved NNI, and will likely remain compliant with the terms of the HCP for the duration of the agreement.

Incremental Costs Associated with Implementing the Mandatory Fish and Water Quality
Conditions Contained within the 401 Certification Should Be Given Full Credit

In establishing the term of the new license, the Commission should also include the costs of the mandatory conditions contained in the final 401 water quality certification, which was filed with FERC on February 29, 2012, long after the FEIS was issued. The 401 water quality certification contains all of the Aquatic Settlement Agreement and HCP measures, and requires additional water quality measures above and beyond those contained in the FEIS. New 401 water quality certification requirements include the installation and operation of 8 USGS website enabled water temperature monitoring stations throughout the Project, additional aquatic nuisance species measures, year-round monitoring for total dissolved gas (TDG) at three locations, biological monitoring for gas bubble trauma and attainment of the TDG standard by 2022. Total costs of the additional measures required by the 401 water quality certification that were not part of the Aquatic Settlement Agreement and HCP and that were not addressed in FERC's FEIS, have an estimated cost of \$35.9 million in the first ten years of the new license and \$1.81 million annually over a 50-year term.

In view of the foregoing, the Commission should give Douglas PUD full credit for all 401 certification costs, including those for the Aquatic Settlement Agreement, the Wells HCP, and the new 401 certification measures. These three programs, together with the terrestrial measures supported by FERC, total more than \$14.7 million per year over a term of 50 years and more than \$15.6 million per year over a term of 30 years.

The Settlement Agreements Support a 50-Year Term

In resolving the license term issue, the Commission should consider Douglas PUD's proactive response to environmental resource concerns and the significant agency, tribal and local community support for a 50-year license for Wells. Support for Douglas PUD's request has been demonstrated through the execution of five settlement agreements with provisions supporting a license term of 50 years. These settlement agreements have been signed by the Washington State Department of Fish and Wildlife (WDFW), the United States Fish and Wildlife Service (USFWS), Bureau of Land Management, Washington State Department of Ecology (Ecology), the Confederated Tribes of the Colville Tribes, the Yakama Nation and the cities of Pateros, Brewster and Bridgeport. In addition, the record includes letters supporting a 50-year term from Senator Patty Murray, Senator Maria Cantwell, Representative Doc Hastings, Representative Kathy McMorris-Rodgers, Representative Dave Reichert, the United States Fish and Wildlife Service, Ecology, United States Department of Interior, WDFW, the Confederated Tribes of the Colville Reservation, Chelan County Commissioners, Douglas County Commissioners, the Public Utility District No. 1 of Okanogan County, Puget Sound Energy, Avista Corporation, the City of Pateros, the City of Brewster, the City of Bridgeport, Chelan County Port District, Douglas County Port District and Columbia River Water Trails Coalition.

The Commission has a longstanding policy to encourage proactive settlements based on technically sound measures that will protect, mitigate and enhance the environmental resources affected by licensed hydroelectric projects. Consistent with this policy, Douglas PUD and stakeholders worked very hard in 2008 and 2009, with the encouragement of FERC staff, to negotiate and execute the five separate settlement agreements referred to above. Stakeholders have entered into these agreements in order to secure the long-term benefits of the Wells Project and the long-term commitment of Douglas PUD for environmental protection and responsible stewardship. Including the commitment of all parties to these agreements for a 50-year license was a primary consideration in Douglas PUD's decision to enter into these agreements. The 50-year license is a key consideration in our commitment to finance the investment of over \$643.6 million for new environmental measures proposed by Douglas PUD in the FLA (Wells FLA, Table 4.0-15). Please note that this amount does not include new costs required by the recently filed 401 water quality certification.

By failing to award the Wells Project a 50-year license term, the Commission would be sending a clear message to other licensees to avoid addressing environmental issues until the last possible minute to assure full credit for the cost of relicensing measures when demonstrating need for a 50-year license term. Douglas PUD should not be penalized for proactively addressing relicensing measures for salmon and steelhead prior to expiration of its existing license.

Coordinated Expiration of the Wells License is Not Warranted

Coordinating license expiration with downstream projects to assess cumulative impacts is unwarranted because the Wells Project has the smallest impact on anadromous fish of any dam on the Columbia River. Wells Dam has consistently produced the highest juvenile Chinook and steelhead project survival rates and has the highest juvenile fish bypass efficiency of any dam located on the Columbia and Snake rivers. Wells Dam is also the first of nine dams that anadromous fish must pass on their way to the Pacific Ocean. The combination of Wells Dam consistently demonstrating high rate of fish survival and the fact that it only has anadromous fish originating from the Methow and Okanogan rivers means that Wells Dam has the least impact on populations of anadromous salmon and steelhead of any FERC licensed project located on the mainstem Columbia River. Therefore, the need to assess cumulative impacts for anadromous salmon and steelhead is substantially diminished for Wells relative to the other projects located downstream of additional salmon bearing rivers, streams and hatcheries.

Further, such coordination will not function as envisioned by FERC. Discussions with key agency and tribal stakeholders have indicated that they will not be able to jointly participate and concurrently conduct ESA and Clean Water Act consultations on all three mid-Columbia PUD relicensing processes. Given limited resources, these agencies and tribes will simply choose which process to participate in and which process will get first treatment and consultation. In separate letters to the FERC, Ecology and WDFW have stated their opposition to coordinating the Wells license term with the Rocky Reach and Priest Rapids licenses.

The letter from Ecology filed with the FERC October 8, 2010 states:

“2) Synchronizing the Wells relicensing process with other mid-Columbia PUDs would put undue staffing burdens on state agencies that are consulting on multiple relicensing processes.”

“3) Coordinating the relicensing of three of the largest projects in the nation at the same time will significantly compound that burden without providing any corresponding benefits.”

The letter from WDFW filed with the FERC October 8, 2010 states:

“3. The proposed relicensing of the three PUD projects at the same time is not in the public interest as the associated workload would exceed WDFW’s staff and resources. It would also place an undue burden upon other state and federal resource agencies, tribes and non-governmental organizations expecting to be involved in these future relicensing proceedings. All parties, including FERC, that have been actively involved in the ILP, recognize that each relicensing proceeding requires significant time and resource investments by all participants. The coordinated relicensing of three of the largest projects in the nation at the same time will significantly compound that burden without providing any corresponding benefit.”

Based upon staff discussions with the USFWS and NMFS, we expect these agencies would encounter similar coordination and staffing issues in connection with ESA and FPA consultations.

Summary

In summary, we respectfully request that the Commission recognize all of the environmental measures and associated costs that are necessary to support the relicensing of the Wells Project in establishing the term of the Wells new license. Together, the environmental measures associated with the relicensing of the Wells Project, including the HCP, Aquatic Settlement Agreement, new 401 measures and the FERC supported terrestrial measures, will cost approximately \$15 million per year, which is clearly within the “extensive” category established by FERC precedent.

A 50-year license for the Wells Project is supported by five settlement agreements involving a broad array of federal and state agencies, Indian tribes, and local communities. A shorter license term to coordinate expiration with the downstream projects is not supported by the record. There is no need to consolidate the assessment of cumulative impacts at Wells because the Project has such high rates of salmon and steelhead survival and is located upstream of most salmon bearing streams. In addition, the resource agencies have made it clear that they would not be able to participate in such concurrent consultations and that the process would be unduly burdensome without providing any corresponding benefits.

Please contact Mr. William Dobbins at (509) 881-2220 or Mr. Shane Bickford at (509) 881-2208, for additional information or comments.

Sincerely,



T. James Davis
Commissioner



Lynn M. Heminger
Commissioner



Ron E. Skagen
Commissioner

Enclosure: Table of Additional 401 Measures and Costs

cc: Chairman Wellinghoff
Commissioner Moeller
Commissioner Norris
Commissioner LaFleur

Official Service List

CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents have been served upon each person designated on the official service list compiled by the Secretary in this proceeding via electronic or first-class mail.

Dated on this 6th day of March 2012.



Mary E. Mayo
Douglas PUD
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(509) 881-2488

Table 1. Additional 401 Measures and Costs not in FEIS or FLA		License Year(s)	Number of Events	50-Year		30-Year	
				Total	Annualized	Total	Annualized
ANNUAL CAPITAL COSTS							
6.1 8)	Administrative Order Amendments	Annual	30	unknown	unknown	unknown	unknown
6.1 18) & 6.4 3)	Website Containing All 401 Related Documents	Annual	30	150,000	3,000	90,000	3,000
6.6 2)	Additional ANS Requirements (Education)	Annual	30	200,000	4,000	120,000	4,000
6.7 2)b)	Non-Fish Spill Season TDG Monitoring/Reporting Infrastructure - Real-time Reporting of Hourly Data	Annual	30	500,000	10,000	300,000	10,000
6.7 2)e)	Compliance Schedule	Year 1-10	10	250,000	5,000	150,000	5,000
6.1 20)	Chief Joseph Tailrace TDG and Water Temperature Station	Every 10 years	3	750,000	15,000	500,000	16,667
6.7 2)g)i)	Minimize Spill - Deferred Turbine Maintenance	Annual	30	unknown	unknown	unknown	unknown
6.7 3)a)iii)	Water Temperature Monitoring Infrastructure - Real-time Reporting of Hourly Data	Annual	30	500,000	10,000	500,000	16,667
Annual Capital Cost Subtotal				\$ 2,350,000	\$ 47,000	\$ 1,660,000	\$ 55,333
PERIODIC CAPITAL COSTS							
6.7 2)g)	TDG Attainment-Automate All Spill Gates (Gates 1 & 11)	By Year 10	1	1,000,000	20,000	1,000,000	33,333
6.7 2)g)	TDG Attainment-Structural Spillway Modifications (6 Flip Lips) ¹	By Year 10, 30 and 50	3	27,000,000	540,000	18,000,000	600,000
6.7 2)g)	TDG Attainment-Structural Bypass Modifications (5 Flip Lips) ¹	By Year 10, 30 and 50	3	22,500,000	450,000	15,000,000	500,000
6.7 2)g)	Additional TDG Attainment Measures	Unknown		unknown	unknown	unknown	unknown
Periodic Capital Cost Subtotal				\$ 50,500,000	\$ 1,010,000	\$ 34,000,000	\$ 1,133,333
ANNUAL O&M COSTS							
6.1 3)	Consultation with Ecology	Annual	30	500,000	10,000	300,000	10,000
6.1 12-13)	Documentation/Filing	Periodic	30	187,500	3,750	112,500	3,750
6.1 15)	Ecology Data Requests	Annual	30	250,000	5,000	150,000	5,000
6.1 18) & 6.4 3)	Website	Annual	30	600,000	12,000	360,000	12,000
6.1 20)	Study Impacts of Federal TDG/Water Temperature Discharged into Wells Project	Year 1-10	1	1,250,000	25,000	750,000	25,000
6.2 1)	Aquatic Settlement Work Group Meetings	Annual	30	5,500,000	110,000	3,300,000	110,000
6.4 4)	Aquatic Settlement Agreement Annual Report	Annual	30	900,000	18,000	540,000	18,000
6.6.1)	Additional ANS Requirements (Millfoil and Crayfish Monitoring)	Annual	30	750,000	15,000	450,000	15,000
6.6.2)	Additional ANS Requirements (Education)	Annual	30	250,000	5,000	150,000	5,000
6.6.4)	Additional ANS Requirements (New Species Management)	Annual	20	2,187,500	43,750	1,312,500	43,750
6.7 2) b)	TDG Monitoring Outside Fish Passage Season	Annual	30	500,000	10,000	300,000	10,000
6.7 2)f)	Measures to Address Non-Attainment of Standards (Models and Studies)	Annual	10	2,000,000	40,000	2,000,000	66,667
6.7 3)a)iii)	Water Temperature Monitoring Station O&M - Daily Transmission of Hourly Data to Website	Annual	30	2,500,000	50,000	1,500,000	50,000
6.7 3)b)	Annual Water Temperature Report	Annual	30	1,500,000	30,000	900,000	30,000
6.7 3)d)	Measure to Address Non-Compliance (Water Temperature)	Unknown		unknown	unknown	unknown	unknown
6.7 4)	Other Numeric Criteria (DO, pH, Toxins, Turbidity, NPSP)	Annual	30	500,000	10,000	300,000	10,000
6.7 6)	Regional Forums	Annual	30	750,000	15,000	450,000	15,000
Annual O&M Cost Subtotal				\$ 20,125,000	\$ 402,500	\$ 12,875,000	\$ 429,167
PERIODIC O&M COSTS							
6.1 7)	Additional Monitoring, Studies, Measures	Year 1-10	1	1,250,000	25,000	750,000	25,000
6.1 9)	Legal and Regulatory Counsel	Periodic	5	312,500	6,250	187,500	6,250
6.1 8)	Administrative Order Amendments	Periodic	5	500,000	10,000	300,000	10,000
6.2 2)	Adaptive Management Studies	Periodic	5	1,100,000	22,000	660,000	36,667
6.7 2)e)	Compliance Schedule - WQAP	Years 1, 11, 21, 31, 41	5	500,000	10,000	300,000	10,000
6.7 2)e)	WQAP - Reasonable and Feasible Study Report	Years 2, 12, 22, 32, 42	5	250,000	50,000	150,000	50,000
6.7 2)g)	TDG Attainment-Automate All Spill Gates	By Year 11	1	1,250,000	25,000	750,000	25,000
6.7 2)g)	TDG Attainment - Modeling, Engineering and Study of TDG Outcome Due to Modifications ²	By Year 11	1	9,000,000	180,000	22,500,000	750,000
6.7 3)c)	Temperature TMDL - Wells Water Temperature Model for TMDL	Years 5, 15, 25, 35, 45	5	1,125,000	22,500	675,000	22,500
Periodic O&M Cost Subtotal				\$ 15,287,500	\$ 350,750	\$ 26,272,500	\$ 935,417
TOTALS				\$ 88,262,500	\$ 1,810,250	\$ 74,807,500	\$ 2,553,250

¹ Installation of flip lips in the 11 spillways at Wells Dam assumes \$1.5 million per spill and bypass bay and assumes a useful life of 20 years. The US Army Corps of Engineers spent \$28 million for 19 bays at Chief Joseph Dam.

² TDG abatement modeling, engineering and assessment of the effects of flip lip installation cost the US Army Corps of Engineers \$9 million at Chief Joseph Dam in 2008. This did not include any fish survival tests.