

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PUBLIC UTILITY DISTRICT NO. 1 OF ) PROJECT NO. 2149  
DOUGLAS COUNTY, WASHINGTON ) WELLS HYDROELECTRIC PROJECT

REQUEST FOR REHEARING OF PUBLIC UTILITY DISTRICT NO. 1 OF  
DOUGLAS COUNTY, WASHINGTON

Pursuant to Section 313(a) of the Federal Power Act (FPA),<sup>1</sup> and Rule 713 of the Commission's Rules of Practice and Procedure,<sup>2</sup> the Public Utility District No. 1 of Douglas County (Douglas PUD) hereby requests rehearing of the November 9, 2012, Order Issuing New License (Licensing Order) for the Wells Hydroelectric Project (Project) signed by the Director of Energy Projects (Director). Douglas PUD seeks rehearing of the Director's decision to limit the term of the new license to 40 years. In addition, Douglas PUD seeks rehearing of the Director's decision to include Article 204 into the new license concerning requirements related to Canadian storage. Douglas PUD also seeks an errata notice to correct certain errors in the Licensing Order.

**I. Background**

**A. License Term**

Douglas PUD is the owner, operator and licensee of the 774.3 Megawatt (MW) Wells Project, located on the Columbia River in central Washington. The original 50-year license to operate the Wells Project, issued by the Federal Energy Regulatory Commission's (FERC or

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<sup>1</sup> 16 U.S.C. § 8251(a).

<sup>2</sup> 18 C.F.R. § 385.713.

Commission) predecessor, expired on May 31, 2012. Since that time, the Project has been operated under the terms of an annual license order issued on May 31, 2012.

On November 9, 2012, the Director issued the Licensing Order granting a new 40-year license. Douglas PUD appreciates the Director's decision to issue a license that, for the most part, is consistent with the terms of the various settlement agreements and management plans filed by Douglas PUD in the relicensing proceeding. Accordingly, Douglas PUD supports the vast majority of the Licensing Order and is implementing the terms of the new license. However, the Licensing Order establishes a license term of only 40 years in spite of the recommendations of the parties to the Aquatic Settlement Agreement, recreation settlement agreements and others for a 50-year license term based upon the extensive environmental commitments made by Douglas PUD.

The Licensing Order provides that the 40-year term is effective the first day of the month in which the Order was issued (November 1<sup>st</sup>). In P 140 of the Licensing Order, the Director supports his decision by indicating that the new Wells license:

“...requires a moderate amount of mitigation and enhancement measures, including: continued implementation of the Wells [Habitat Conservation Plan] HCP including fish passage; tributary enhancement and hatchery programs; implementation of a Wells Hatchery UCR Steelhead Hatchery Genetic Management Plan; implementation of management plans to protect and enhance water quality, bull trout, Pacific lamprey; white sturgeon, resident fish, and control aquatic nuisance species; implementation of plans that would protect and enhance wildlife and associated habitat; implementation of a plan to enhance recreation opportunities; and implementation of a plan to protect historic properties.” [Emphasis added].

The Licensing Order asserts at P 141 that because the Wells Anadromous Fish Agreement and Habitat Conservation Plan (Wells HCP or HCP) measures are continuing from the original license, the cost of the HCP measures should be excluded from consideration for purposes of determining measures contained in the new license. The Licensing Order also states

that it is Commission policy to coordinate the expiration dates of licenses to the extent possible to allow for the future consideration of cumulative impacts.

The Licensing Order asserts at P 143 that the HCPs (Wells, Rocky Reach and Rock Island) terminate in 2052 and that:

“...choosing a license term to coincide with the expiration of the HCPs (in 2052 or in 40 years) is not only consistent with the moderate amount of mitigation and enhancement measures included in the license, but will also allow future coordination among the Columbia River Basin projects.” [Emphasis added].

**B. Article 204 - Canadian Storage**

Article 204 of the Licensing Order states:

“The licensee shall use the improved streamflow from Canadian storage projects for power production purposes, and make available to the federal system for delivery to Canada, or its account, the project’s share of coordinated system benefits resulting from such improved streamflows, both dependable hydroelectric capacity and average annual usable hydroelectric energy, as determined to be due to Canadian interests under the procedures established pursuant to any treaty between the United States and Canada relating to cooperative development of water resources of the Columbia River Basin.”

The language in Article 204 was recommended by the Bonneville Power Administration (BPA) and the United States Army Corps of Engineers (Corps) in an October 7, 2010 filing. The filing stated that the Columbia River Treaty prohibits use for power generation of improved streamflows in the U.S. resulting from the operation of Canadian storage developed under the Treaty without the prior approval of the U.S. Entity, and that the U.S. Entity is authorized to set conditions on any such use allowed by the U.S. Entity. BPA and the Corps state that Wells, along with other non-federal dams, is situated in the mid-Columbia River system where improved streamflows in the U.S. pursuant to the Treaty<sup>3</sup> occur, and that since 1964 Douglas

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<sup>3</sup> Treaty between the United States of America and Canada relating to cooperative development of the water resources of the Columbia Basin, 15.2 U.S.T. 1555 1964.

PUD and the other non-federal dam owners have sought use of the improved streamflows for power generation purposes. BPA's filing further states that the U.S. Entity has entered into a series of identical agreements with Douglas PUD and the other non-federal dam owners to allow use of the improved stream flow so long as these non-federal dam owners deliver to BPA a "portion of the Canadian Entitlement generated at their projects."

## **II. Statement of Issues**

Pursuant to the requirements of the Commission's Rule 713(c)(2), Douglas PUD provides the following statement of issues:

1. Whether the Director's decision to adopt a 40-year license term is unsupported by the record, contrary to FERC precedent, arbitrary and capricious and not in the public interest. *New York Power Authority*, 105 FERC ¶ 61,102 (2003); *New York Power Authority*, 118 FERC ¶ 61,206 (2007); *Portland General Electric Co.* 111 FERC ¶ 61,450 (2005); *Policy Statement on Hydropower Licensing Settlements*, Docket No. PL06-5-000, Issued September 21, 2006.

(a) Whether the Director erred by not considering the future costs of the Wells HCP measures notwithstanding that such measures are extensive and were relied upon by all parties and FERC to satisfy all relicensing requirements applicable to anadromous salmon and steelhead.

(b) Whether the Director's decision to coordinate the Wells license expiration with the licenses for Rocky Reach and Priest Rapids, on the grounds that such coordination is necessary to maximize assessment of cumulative impacts, is arbitrary and capricious and unsupported by the record.

(c) Whether the Director's decision to limit the license term to 40 years is in conflict with the settlement agreements and recommendations of the parties and is

contrary to the Commission's policy and the public interest in fostering the resolution of complex issues through the execution of comprehensive, long-term agreements.

2. Whether the Director's decision to include license Article 204 to address Canadian Storage is unsupported by the record, inconsistent with FERC precedent and arbitrary and capricious. *Public Utility District No. 1 of Chelan County, Wash.*, 46 FERC ¶ 61,033 (1989); *Public Utility District No. 2 of Grant County, Wash.*, 123 FERC ¶ 61,049 (2008); *Public Utility District No. 1 of Chelan County, Wash.*, 126 FERC ¶ 61,138 (2009).

**III. The Director's Decision to Limit the License Term to 40 Years is Not Supported by Substantial Evidence, Contrary to Precedent and Otherwise Arbitrary and Capricious.**

The Director offered three assertions to justify a 40-year license term rather than the 50-year term requested by the licensee and supported by 22 federal, state, tribal and local community organizations. As shown below each of these assertions is without merit and unsupported in the record.

**A. The Licensing Order Incorrectly Assumed That the Wells HCP Expires in 2052.**

First, the Director incorrectly assumed that the Wells HCP expires on the same date (2052) as the Rocky Reach and Rock Island HCPs. The Wells HCP does not expire until 2054 and it is not synchronized to expire on the same day as the Rock Island HCP or the Rocky Reach HCP. This inaccuracy has appeared in a number of FERC documents, including the license orders for Priest Rapids<sup>4</sup> and Rocky Reach.<sup>5</sup> Douglas PUD filed comments with the

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<sup>4</sup> *Public Utility District No. 2 of Grant County, Wash.*, 123 FERC ¶ 61,049 at P 186 (2008).

<sup>5</sup> *Public Utility District No. 1 of Chelan County, Wash.*, 126 FERC ¶ 61,138 at P 153 (2009).

Commission in 2009 pointing out that the Wells HCP became effective upon approval by the FERC in 2004, has a term of 50 years and does not expire until 2054.<sup>6</sup>

The National Marine Fisheries Service (NMFS) has also filed comments indicating the effective date, term and expiration date for the Wells HCP. Specifically, on page 12 of its October 8, 2010 filing, NMFS clearly states:

“When the HCP (Wells) expires in 2054, options will exist to extend the protection measures contained in the HCP to match the term of the license. Therefore, if the Commission, in its discretion, opts for a longer license term (as has been proposed by settlement parties), NMFS will respond accordingly and discuss extension of the HCP with appropriate parties in 2054.” [Emphasis added].

Section 1 of the Wells HCP is very clear with respect to the effective dates and term of the Wells HCP:

“...this Agreement (Wells HCP) shall become effective on the date this Agreement is approved by FERC and shall remain in full force and effect for a period of fifty (50) years from that date.”

The FERC approved the Wells HCP on June 21, 2004. Accordingly, the term of the Wells HCP is fifty (50) years, became effective on June 21, 2004, and has a termination date of June 21, 2054, not November 1, 2052. Douglas PUD requests the Commission to correct this decision and establish a license term of 50 years for the Wells Project.

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<sup>6</sup> See Douglas PUD Comments on Rocky Reach Order On Offer of Settlement and Issuing New License filed April 2, 2009.

**B. The Director’s Conclusion that the Wells License Contains Only a “Moderate” Amount of Mitigation and Enhancement to Justify a 40-Year License Term is Contrary to the Record and Arbitrary and Capricious.**

It is the FERC’s policy to grant “30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.”<sup>7</sup>

Recent examples of 30-year terms include projects such as the 29 MW Piney Project in Pennsylvania and the 8 MW Blue Lake Project in Alaska where environmental protection, mitigation and enhancement (PM&E) measures were adopted requiring the expenditure of less than approximately \$3 million in each case during the term of the new license. The FERC granted 40-year terms recently to the 359 MW Tapoco Project where PM&E measures under the new license called for the expenditure of \$15 million, which reflects a moderate amount of measures and activities.<sup>8</sup> The FERC has recently granted 50-year license terms for over 20 projects, both large and small, where the capital and operational costs to be expended during the term of the new license were deemed extensive.

Of the many projects granted 50-year license terms, the St. Lawrence - FDR Project is most similar to Douglas PUD’s Wells Project in that it is a large project (912 MW), incorporated a settlement agreement with stakeholders that specifically supported a license term of 50 years, did not propose any changes in project facilities or operations for power development purposes but did propose extensive PM&E measures for fish, wildlife, recreation, and cultural resources. The final license order for the St. Lawrence – FDR Project included PM&E measures requiring

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<sup>7</sup> See *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,383-84 (1994).

<sup>8</sup> *Alcoa Power Generating, Inc.*, 110 FERC ¶ 61,056 (2005).

the expenditure of approximately \$6.25 million annually or \$312 million over the term of the new license.<sup>9</sup> This level of PM&E cost is half the level of expected environmental costs to be incurred by Douglas PUD.

The Niagara Project (2,755 MW) is another example of a project that received a 50-year license term that includes no change in project operations.<sup>10</sup> The new license for Niagara incorporated settlement agreements with stakeholders supporting a 50-year license term and proposed extensive PM&E measures supporting the 50-year license term totaling \$4.5 million per year.<sup>11</sup> In fact, in the Niagara proceeding, the license term was one of the issues challenged in court by petitioners, but the D.C. Circuit Court of Appeals specifically upheld the FERC's establishment of the 50-year term based upon the FERC's longstanding policy of issuing longer licenses when license conditions impose greater costs on license holders.<sup>12</sup>

Douglas PUD has entered into six settlement agreements related to relicensing and 12 resource management plans to be implemented during the term of the new license that will require expenditures in excess of \$644 million in new environmental measures over a period of 50 years or more than \$12 million per year over 50 years.<sup>13</sup> In exchange for these extensive commitments from Douglas PUD, the parties to the relicensing settlement agreements and management plans have explicitly supported a 50-year term for the new Wells Project license. The settling parties' recommendations for a 50-year term are further supported by five federally

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<sup>9</sup> See Order Approving Settlement Agreements, Dismissing Complaint, and Issuing New License. *New York Power Authority*, 105 FERC ¶ 61,102 (2003).

<sup>10</sup> See Order On Offer of Settlement and Issuing New License. *New York Power Authority*, 118 FERC ¶ 61,206 at P 113 (2007).

<sup>11</sup> *Eastern Niagara Power Alliance v. FERC*, 558 F.3d 564 (D.C. Cir. 2009).

<sup>12</sup> *Id.*

<sup>13</sup> See Wells Hydroelectric Project, Final License Application, Exhibit D – Statement of Costs and Financing (2010).



elected officials and eight community organizations. This extensive set of new environmental measures authorized under the new license order for Wells is fully consistent with Commission precedent issuing 50-year licenses for large projects with similar settlement agreements, stakeholder support and levels of environmental costs.

Notwithstanding a \$12 million annual expenditure, the Director concluded that the level of mitigation measures is “moderate” on the grounds that the annual HCP costs should not be included in this assessment. However, for the reasons set forth below, this conclusion is flawed and contrary to the public interest. It is FERC policy that no project activities, conditions, terms or measures from the original license be automatically “carried over” from the current license to the new license. In determining the conditions to be attached to a new license during the relicensing process, the FERC must reevaluate and reaffirm each prior environmental measure or action before it is included into the terms of the new license.<sup>14</sup> The FERC may substantially alter any past measure as a condition to a new license, or drop it entirely, if it believes current circumstances justify such modification or elimination. At the time that the FERC includes the measure into a new license, it is considered a “new measure.” If an original license environmental measure is excluded from a new license by the FERC, then the licensee is no longer required to expend funds to carry out that measure. All prior measures required under a new license are considered “new measures” precisely because the FERC reevaluates the appropriateness of these measures anew and does not automatically carry them over from the old license. For purposes of determining the new license term, Douglas PUD is requesting that the FERC fully consider the future cost of the Wells HCP that the FERC has reaffirmed and made a part of the new license as well as the cost of any additional measures that the FERC has

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<sup>14</sup> See *City of Tacoma*, 104 FERC ¶ 61,092 at P 42 (2003).

determined to be warranted under the new license. As set forth in Exhibit D of the Final License Application (FLA), the future costs associated with such PM&E measures as proposed by Douglas PUD for the Wells Project are estimated to exceed \$644 million over a new 50-year term.<sup>15</sup>

In P 141 of the Licensing Order the Director asserts that in prior proceedings the Commission has concluded that HCP costs should be “excluded from consideration for purposes of determining measures contained in the new license.”<sup>16</sup> This argument is flawed in two respects. First, the FERC appears to have arbitrarily prejudged the license term for the Wells Project when issuing the licenses for the Priest Rapids and Rocky Reach projects. This prejudgment by a prior Commission should not pre-determine a sitting Commission’s decision, which must be based upon the record in the pending proceeding. Second, the Licensing Order contains mandatory conditions filed by the NMFS, United States Fish and Wildlife Service (USFWS) and Washington State Department of Ecology (Ecology) requiring Douglas PUD to implement the HCP measures. The HCP parties and Ecology agreed to rely upon the HCP measures for the relicensing of the Wells Project instead of developing new measures for the five HCP Plan Species (spring Chinook, steelhead, summer Chinook, sockeye and coho). Absent the existence of the Wells HCP, the HCP parties and Ecology would have been required to develop an alternative set of anadromous fish measures to be included in the new license to comply with applicable laws, including FPA sections 10 and 18 and the Endangered Species Act. Absent the HCP, Douglas PUD would have been given credit for the cost of the new anadromous fish

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<sup>15</sup> Douglas PUD is not asking the FERC to establish a 50-year license term based upon its expenditure of funds for any measure during the term of the initial license.

<sup>16</sup> 141 FERC ¶ 62,104 at P 141 (2012).

measures. If let stand, the Licensing Order will send a chilling effect on any future efforts to settle contentious issues that bridge a license term for a hydroelectric project.

**C. The Director’s Decision to Limit the License Term is Inconsistent with FERC Policy Supporting Settlement Agreements at Relicensing.**

The 2006 Policy Statement on Hydropower Licensing Settlements stated: “the Commission looks with great favor on settlements in licensing cases.” In the case of the Big Fork Project<sup>17</sup>, the FERC granted a 50-year license term relying on the finding that the new license “included many measures to protect fish and enhance recreation” and that the licensee had “reached a Settlement Agreement with most of the parties in which a 50-year license was recommended.” This is also true for the Wells Project because the parties to five relicensing settlement agreements explicitly support a 50-year term and propose an extensive list of over 130 new PM&E measures.

In the Pelton-Round Butte relicensing, the FERC’s order relied on the settlement agreements as justification for a 50-year term. The FERC stated “because the term of the license was likely an important element in the negotiations that led to the Settlement Agreement, we are issuing this new license for a term of 50 years.” This is also the case for the Wells Project because the explicit commitment of the counterparties to support a 50-year license term was a primary consideration to Douglas PUD in exchange for undertaking the extensive commitments within the Aquatic Settlement Agreement and other relicensing agreements.

The FERC’s reliance on the license term recommendations found within settlement agreements is also evident in the St. Lawrence-FDR license order, where the FERC stated:

“We also find however that the PM&E measures to which NYPA has committed that are intended to become license obligations are reasonably characterized as

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<sup>17</sup> *PacifiCorp*, 104 FERC ¶62,059 (2003).

extensive. That, and the agreement of the Settlement Agreement signatories on a 50-year term, leads us to conclude that a 50-year term is in the public interest.”

Consistent with the foregoing precedents Douglas PUD and stakeholders have executed five separate settlement agreements, explicitly supporting a 50-year license term for the Wells Project. Stakeholders that have executed settlement agreements supporting a 50-year license term include USFWS, Bureau of Land Management, Ecology, Washington State Department of Fish and Wildlife, Confederated Tribes of the Colville Reservation, Confederated Tribes and Bands of the Yakama Nation and the cities of Pateros, Brewster and Bridgeport. 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 to environmental protection and responsible stewardship. Douglas PUD has entered into these agreements to secure the support of a broad group of stakeholders for a 50-year license term, which is desirable and advantageous to finance the investment of over \$2.9 billion in future Project costs, including over \$644 million for new environmental measures. In view of the extensive environmental measures required by the Licensing Order and the fact that the 50-year term was a fundamental element in the negotiations of the Aquatic Settlement Agreement and other settlement agreements, a 50-year license term for Wells is fully consistent with the FERC’s hydro settlement policy and precedents.

**D. Coordination of Wells License Expiration with Rocky Reach and Priest Rapids is Not Required to Address Limited Cumulative Impacts.**

The Licensing Order indicates that a coordinated expiration of the licenses for Wells, Priest Rapids and Rocky Reach is in the public interest because it will allow the Commission to:

“...maximize future consideration of cumulative impacts in contemporaneous proceedings at relicensing.” (Licensing Order at P 141 n.83).

Coordination of the Wells license expiration for the purpose of maximizing consideration of cumulative impacts is in fact not warranted in view of the FERC’s own assessment of the

limited extent of cumulative impacts associated with the Wells Project when compared to the cumulative impacts identified during relicensing for the Rocky Reach and Priest Rapids projects.

There is no evidence in the record for the Wells relicensing that demonstrates a need to coordinate cumulative impact assessments of the Wells Project with the Rocky Reach or Priest Rapids projects. First and foremost, Douglas PUD is already achieving Phase III compliance with the Wells HCP survival standards as determined by the HCP Coordinating Committee in 2007.<sup>18</sup> In short, the achievement of Phase III compliance indicates appropriate adult and juvenile survival standards have been met or are likely to have been reached based upon all available scientific evidence. In addition to meeting the survival standards, Douglas PUD has also implemented all hatchery compensation and tributary enhancement measures identified in the Wells HCP and authorized by the Hatchery and Tributary committees. Through continued achievement of Phase III survival standards and the on-going implementation of all HCP hatchery compensation and tributary enhancement programs, Douglas PUD is, by definition, achieving the Wells HCP goal of No Net Impact for the Wells Project. The Parties to the Wells HCP have documented the achievement of No Net Impact in the HCP Annual Report for 2011 where it states:

“Douglas PUD has successfully met or exceeded all requirements for NNI under the Wells HCP.”<sup>19</sup>

The achievement of No Net Impact for the Wells Project was also confirmed in the terms and conditions filed by the USFWS on November 19, 2010. Specifically, the USFWS’s amended comments, recommendations, terms and conditions, and prescriptions states:

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<sup>18</sup> See Annual Report Calendar Year 2007 of Activities Under the Anadromous Fish Agreement and Habitat Conservation Plan. Wells Hydroelectric Project, FERC License No. 2149. (2008).

<sup>19</sup> See Annual Report Calendar Year 2011 of Activities Under the Anadromous Fish Agreement and Habitat Conservation Plan. Wells Hydroelectric Project, FERC License No. 2149. P. 2 (2012).

“10(j) Recommendation No. 1: Duration of New License: For the conservation, development, and mitigation of damages to fish and wildlife resources, the terms of the new license should be 50 years in accordance with the Wells Aquatic Settlement Agreement.

### **Justification**

The Wells [Anadromous Fish Agreement/ Habitat Conservation Plan] AFA/HCP is intended to constitute a comprehensive and long term adaptive management plan for spring and summer/fall Chinook salmon, sockeye salmon, coho salmon and steelhead (Plan Species) and their habitat as affected by the Wells Project...No Net Impact (NNI) has been attained for all Plan Species identified in the Wells AFA/HCP, and attainment can reasonably be expected to continue for the duration of the new license term, given the applicant’s proposal to continue implementation of the AFA/HCP measures as part of the new license.” [emphasis added].

“...The Service will also complete a biological opinion for the relicensing of the Project which is anticipated to permit incidental take of bull trout for 50 years.”

“The Wells [Aquatic Settlement Agreement] ASA, together with the Wells AFA/HCP, address the project related impacts for spring and summer/fall Chinook salmon, sockeye salmon, coho salmon, and steelhead in addition to bull trout, Pacific lamprey, resident fish, white sturgeon, water quality and aquatic nuisance species for 50 years...The Service anticipates participating in the adaptive management of listed species through the license period, as agreed to in the settlement agreements. Therefore the Service supports a 50-year license term for the Project.” [emphasis added].

Second, the relicensing and Wells HCP studies conducted to date support the FERC’s determination in the Final Environmental Impact Statement (FEIS) that the Wells Project has no cumulative impacts on non-aquatic resources and has a minimal contribution to cumulative impacts on aquatic resources. With regard to cumulative impacts Section 3.3.1.3 of the FERC’s FEIS for the Wells Project, states:

“Continued refinement of spill operational guidelines through the development of annual GAPs, which are subject to review and approval by Washington DOE, should serve to limit the project’s cumulative contribution to high TDG levels in the Columbia River.”

“The Wells HCP and associated HGMPs reduce direct and indirect project-related effects on Plan Species, thereby reducing the cumulative effects on these species within the Columbia River Basin.”

“The cumulative contribution of the Wells Project to the incidence of high TDG levels is limited by the low frequency of forced spills at the dam and the relatively small spill volumes that are required to provide effective downstream passage of migrating juvenile salmonids. The juvenile bypass system at Wells dam requires lower spill volumes than have been required at other dams on the mid- and lower Columbia River to provide safe passage for downstream migrating fish. As a result, the project’s contribution to cumulative effects on TDG levels is relatively minor in comparison to other dams on the mid- and lower Columbia River.”

“The Hanford Agreement also established reservoir operating procedures to be followed by Chelan PUD and Douglas PUD during the rearing period to assist Grant PUD in reducing the effects of flow fluctuations in the Hanford Reach on fall Chinook salmon, thereby reducing the cumulative effect on this species within the Columbia River Basin.”

“Implementation of Douglas PUD’s Pacific Lamprey Management Plan (as well as continued implementation of the Wells HCP measures related to juvenile salmonids bypass, habitat improvements, and fish ladder operations) would reduce cumulative adverse effects on Pacific lamprey population in the Columbia River Basin.”

“Overall, it is anticipated that implementation of Douglas PUD’s Bull Trout Management Plan and the 2004 Bull Trout Monitoring and Management Plan, combined with other recovery efforts being implemented in the region, would reduce adverse cumulative effects on bull trout particularly as they relate to upstream and downstream passage in the Columbia River Basin.”

“Overall, implementation of Douglas PUD’s White Sturgeon Management Plan would reduce any potential cumulative adverse effects on white sturgeon.”

Accordingly, the record demonstrates that through the continued implementation of the Wells HCP and Aquatic Settlement Agreement management plans, the Wells Project will continue to have minimal cumulative impacts on aquatic resources.

Finally, state resource agencies have also clearly indicated that they oppose synchronizing the expiration of the Wells license with the licenses for the Priest Rapids and the Rocky Reach projects. Not only is this proposed synchronization unnecessary for evaluating cumulative impacts but it would place an undue burden upon the resource agencies and tribes. In reference to these matters Ecology’s October 8, 2010 letter states:

“We would like to express our support for a 50-year license for this Project based on the following reasons:

- 1) The aquatic management plans provide strong, clear goals and objectives, with the flexibility via adaptive management to meet these goals in cases of new or changing circumstances.
- 2) Synchronizing the Wells relicensing 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.
- 4) Experience on relicensing the Rocky Reach and Priest Rapids provide [*sic*] will provide federal and state staff experience to be applied to the Wells Project.
- 5) Support for a 50-year term was an essential element considered during the negotiation of the Aquatic Settlement Agreement. Stakeholders wanted a longer term to ensure that the benefits of the project were available for the longest term possible.”

Similarly, WDFW’s October 8, 2010 letter states:

“WDFW recommends a fifty-year term for the Wells FERC license per the ASA section 5.2.2 and opposes the coordinated expiration of the Wells license with the new license for the Rocky Reach, Wanapum and Priest Rapids Projects.

Justification:

- 1) Support for a 50-year term was an essential element considered during the negotiation of the Aquatic Settlement Agreement and Off-License Settlement Agreement. Stakeholders wanted a longer term to ensure that the benefits of the project were available for the longest term possible. The final agreed upon Aquatic Settlement Agreement and the off-License Settlement Agreement requires the parties to these agreements to support a 50-year license term for the Wells project.
- 2) The ASA and Final license application are consistent with the No Net Impact survival standards, and therefore supports a long-term license.
- 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 likely place an undue burden upon other state and federal resource agencies, tribes and non-



governmental organizations expected 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 a significant time and resource investment 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 benefits.”

Therefore, there is no support in the record for the assertion that license coordination is necessary to maximize the assessment of cumulative impacts. Coordination is also contrary to the public interest because it will impose undue burdens on the state water quality and fish and wildlife agencies without providing any corresponding benefits.

The Commission should grant rehearing because the evidence in the Wells proceeding strongly supports a 50-year license term. The Licensing Order includes environmental mitigation measures which are similar to what the FERC has defined as “extensive” in the licensing orders for projects of similar size and environmental commitments.

The seven parties to the Aquatic Settlement Agreement, the other four relicensing settlement agreements, and fifteen other stakeholder entities have explicitly supported a 50-year term for the new Wells license and many have expressed direct opposition to a coordinated three PUD relicensing proceeding in 2052. Conversely, there is no need for coordination of the Wells license expiration with other projects to assess cumulative impacts. All of the resource studies indicate that the Wells Project impacts are few, and where even limited cumulative impacts have been identified, Douglas PUD has effectively addressed these impacts through settlement agreements.

A 40-year license term unfairly deprives Douglas PUD and the parties to the Wells HCP, Aquatic Settlement Agreement and other relicensing settlement agreements of a fundamental consideration negotiated under those agreements. It would also have the perverse effect of

penalizing Douglas PUD for being proactive and developing comprehensive, long-term measures at the Wells Project to effectively minimize direct or indirect adverse impacts.

**IV. Article 204 on Canadian Storage is Unnecessary, Outdated and Inconsistent with FERC Precedent.**

Article 204 should be deleted from the new license because including it is inconsistent with the licensing orders issued by the Commission for all of the other non-federal dams on the mainstem Columbia River system that also use the improved streamflows under the Treaty. None of the new licenses for the Priest Rapids, Rock Island or Rocky Reach projects include the language set forth in Article 204.<sup>20</sup> The new licenses for these projects include Form L-5 (October 1975) and do not include a specific license article for Canadian Storage. It is apparent that standard Article 10, included in Form L-5, was deemed sufficient to protect federal interests related to the administration of the Treaty and sufficient to address the other licensees' obligations with respect to improved streamflows under the Treaty. There is no support in the Wells Licensing Order or the record for including a specific Canadian Entitlement obligation in the Wells license. This creates a different treatment for Douglas PUD under the same facts and circumstances as other downstream licensees.

Douglas PUD believes that standard Article 10 protects federal interests in regard to Canadian Storage. Specifically, Article 10 of the Wells license states:

“The licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission any [*sic*] direct in the interests of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the licensee as the Commission may order.”

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<sup>20</sup> *Public Utility District No. 1 of Chelan County*, 126 FERC ¶ 61,138 (2009); *Public Utility District No. 2 of Grant County*, 123 FERC ¶ 61,049 (2008); *Public Utility District No. 1 of Chelan County*, 46 FERC ¶ 61,033 (1989).

Removing the extraneous Article 204 and instead relying on the language in Article 10 will align the Wells Licensing Order with the precedent set by the Commission in its earlier orders on the downstream non-federal projects.

For the reasons stated above, the Commission should grant rehearing and remove Article 204 from the Wells license.

**V. Request for Issuance of Errata Notice.**

The Licensing Order contains several technical errors that should be corrected to provide a more consistent and accurate license and to better allow Douglas PUD to understand its obligations throughout the term of the new license. Accordingly, Douglas PUD requests the Commission to issue an errata notice addressing the following:

**1. Page 5, Section D. Project Boundary.**

This section contains an error in the description of the Project Boundary for the Wells Project. The Licensing Order should be corrected to read:

18. The project boundary ~~generally follows the 781-foot msl elevation contour line along the Wells reservoir, and encloses the Wells reservoir,~~ the project dam, powerhouse, tailrace area, transmission lines, fish passage facilities, the Wells Hatchery, and several wildlife management areas and recreational facilities. The project boundary for the Wells reservoir is set by the higher of: 1) elevation 784-feet-msl; 2) four feet above the backwater for the one-in-ten year flood; or 3) three feet above backwater for the flood of record with the headwater at elevation 773-feet-msl.

**2. Page 41, P 143.**

The description of the expiration of the HCP is inaccurate. The Licensing Order should be corrected to read:

143. In 2008 and 2009, the Commission issued new licenses for, respectively, the Priest Rapids Project and the Rocky Reach Project. Both licenses expire in 2052. Both licensees for Rocky Reach and Wells Projects are parties to the HCPs that include provisions for the protection of salmon and steelhead through a combination of project survival, hatchery programs and evaluations, and habitat restoration work. The Rocky Reach and Rock Island HCPs expire in 2052. The Wells HCP expires in 2054.

**3. Page 42, Subparagraph (B)(2)(g).**

The description of Project works is inaccurate. The Licensing Order should be corrected to read:

(2) Project works including: ...

(g) 10 turbine/generating units each with a 77.425- MW generator for a total installed capacity of 774.25 MW and a maximum hydraulic capacity of 22,000 cfs at an average gross head of 73 feet with a gross head of 61 feet;...

**4. Page 44, Article 203 - Encroachment.**

License Article 203 should be clarified to reflect the principles agreed upon within the comments filed jointly by BPA, Corps and Douglas PUD on November 9, 2011. Specifically, Article 203 should be modified per the language below:

“...For Chief Joseph Units 1-16, the licensee will provide encroachment payments representing the difference in Chief Joseph generation with and without the impact of the Wells Project in time and kind for the full Wells pool with updated efficiency curves. ~~For Chief Joseph Units 17-27, the licensee will provide compensation for the excess water use between forebay elevation 779 and 781 feet mean sea level.~~ The licensee will provide encroachment payments for Units 17-27 for Wells forebay elevations between 779 and 781 feet mean sea level. In addition, the licensee will provide compensation for the excess water use by Units 17-27 for Wells forebay elevations between 771 and 779 feet mean sea level. Compensation will be based on the amount of water used by Chief Joseph Units 17-27 in excess of the hydraulic limit of the smaller units that would have been installed without the Wells Project. Encroachment compensation would not be automatically eliminated when Chief Joseph is spilling. The licensee will provide compensation payments for water going through the turbines during instances when spill occurs at Chief Joseph, such as spilling for reserves or total dissolved gas management. The licensee will compensate the federal government for the mutually agreed incremental cost of the future unit replacements consistent with the licensee’s 1963 compensation for the incremental cost of units 17-27.”

## **VI. Conclusion**

Wherefore, Douglas PUD respectfully requests the Commission to grant rehearing of the Director's Licensing Order to establish a license term of 50 years and to delete Article 204 on Canadian Storage. In addition, the Commission should issue a notice of errata related to the four items discussed above.

Respectfully submitted,

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DATED: December 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 10<sup>th</sup> day of December, 2012.

/s/ Mary Mayo

Mary Mayo

Administrative Assistant - Relicensing

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