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The Tulalip Tribes are the successors  
in interest to the Snohomish,  
Snoqualmie and Skykomish tribes  
and other tribes and band signatory  
to the Treaty of Point Elliot.

April 18, 2007

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

RE: Comments of The Tulalip Tribes of Washington, *Preliminary Permits for Wave, Current, and Instream New Technology Hydropower Projects, Notice of Inquiry and Interim Statement of Policy* (FERC Docket No. RM07-08-000)

Dear Secretary Bose:

Thank you for the opportunity to comment on alternative approaches to the current preliminary permit process for tidal energy project proposals.

1. “Strict Scrutiny” Policy

We support the new interim policy that the FERC has taken to provide stricter scrutiny of permit applications. Tulalip is very disappointed however, that the tribes are not even mentioned in the policy statement. As you know, the FERC shares in the federal trust responsibility of protecting tribal treaty reserved rights. The tribes in the northwest have rights reserved by treaties with the United States to harvest fish and wildlife and an implied right to protect the habitats for the fish and wildlife species.

2. Treaty Reserved Rights:

Each of the proposed tidal energy project sites in the Puget Sound region of Washington State lie within the usual and accustomed fishing areas of at least 1 treaty Indian tribe. The Tulalip Tribes have rights to harvest fish reserved under the Treaty of Point Elliott at 7 of the 8 locations, and have treaty reserved rights to harvest fish that migrate through the remaining site. Fishing is generally prohibited near existing tidal energy projects due to the inherent dangers of fishing gear getting caught in the underwater turbines. The development of tidal energy in the Puget Sound region would cause a direct take of tribal reserved rights to harvest fish at their usual and accustomed fishing areas. A direct taking of a treaty right cannot be permitted without either obtaining the consent of the affected tribes or by explicit congressional authorization, neither of

which has occurred. The FERC should require early consultation with potentially affected tribes with treaty reserved fishing rights, to avoid costly studies for locations that are highly unlikely to be developed due to treaty right impacts.

3. Notice of Preliminary Permits:

Under FERC's regulations, an applicant for either a preliminary permit or a license must identify all Indian tribes that may be affected by the project. 18 CFR 4.32(a)(2)(v). But only license applicants are required to give proof of notice to potentially affected tribes. 18 CFR 4.32(a)(3)(i)(B). Since the applicants for preliminary permits are not required to notify potentially affected Indian tribes, tribal governments generally do not learn about the permit applications until the intervention deadline has already passed. For example, the Tulalip Tribes and the Puyallup Tribe learned about the Tacoma Narrows Project (Docket P-12612) only after the intervention deadline had passed, and both Tribes were denied late intervention. FERC should require permit applicants to notify Indian tribes and others in the same fashion that license applicants are required to show proof of notice under 18 CFR 4.32(a)(3)(i)(B).

4. Unknown Project Effects on Protected Resources:

Currently, there is very little information known about the effects of tidal energy projects on marine life. At a time when we are dealing with marine species at threat of extinction, we need to take a very cautious approach for developing new technologies. In Puget Sound, the Puget Sound Chinook Salmon, Hood Canal Chum Salmon, and the Southern Resident Killer Whales are examples of species of high importance to the tribes and the northwest in general for many reasons. They have also been listed under the Endangered Species Act due to their severely depressed population numbers and the current threats to their continued existence.

Millions of dollars are being invested annually to help recover these species. Recovery plans have been adopted for salmon and are in draft form for whales. Participation by the parties that are involved with the recovery efforts is critical. They need to be involved in designing the study plans to assess the potential impacts to marine life from the proposed projects. They also need to address how the proposals may fit in meeting the regions energy demand, without being a major impact to the recovery of threatened or endangered species.

The southern portion of Puget Sound and Hood Canal are areas that have developed dead zones due to the lack of oxygen in the water column. This problem is caused by pollution and the lack of adequate flushing within Puget Sound. Tidal energy projects take energy from tidal currents to create electricity. This has the effect of reducing current flows which may also reduce the flushing effects within Puget Sound and exacerbating the problems that currently exist.

Although the tribes are generally very supportive of renewable energy projects, the tribes have major concerns about how tidal energy is developed. As wind energy started to be developed, the proponents quickly had problems because of wind mills killing migratory birds. Since then, the new developments have stayed away from the migratory flyways and have modified their designs to have less of an impact on bird populations. The tribes do not want to see similar impacts to fish or marine mammals during the initial startup of new tidal energy development.

The tribes are very active with the recovery efforts in the Puget Sound region for many marine species and need to have a strong active role in the development of tidal energy as well. Tulalip is actively monitoring the tidal energy proposals for Puget Sound and the FERC actions concerning tidal energy development. FERC needs to recognize the potential effects of tidal energy development on tribal Treaty rights, and require tribal participation in the permitting processes.

5. Conclusion:

Tidal energy may become an important part of the nations energy supply, but some regions may prove unsuitable due to environmental, Endangered Species Act, treaty rights issues and other issues. The technology is so new that the potential environmental effects are still largely unknown, but the potential effects on tribal treaty fishing rights are very clear and unavoidable.

A strict scrutiny approach with proper notification of all affected parties and an approach that fully recognizes treaty fishing rights of Indian tribes would seem appropriate. Participation in the permitting process of all affected parties is critical for the protection of public resources.

Thank you for considering the comments of the Tulalip Tribes. If you have any questions, please contact Daryl Williams at 360-651-4476 or [dwilliams@tulaliptribes-nsn.gov](mailto:dwilliams@tulaliptribes-nsn.gov).

Sincerely Yours,

A handwritten signature in cursive script that reads "Melvin Sheldon". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Melvin Sheldon  
Chairman