



Skagit River System Cooperative

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April 30, 2007

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

Reference: Swinomish Indian Tribal Community comments Notice of Inquiry and Interim Policy Statement (RM07-08-000)

Dear Ms. Bose:

Skagit River System Cooperative submits the following comments on behalf of the Swinomish Indian Tribal Community.

The Swinomish Indian Tribal Community reserved the right to take fish at its usual and accustomed grounds and stations” in Section 5 of the Treaty of Point Elliott of 1855. That right, so crucial to the Tribe’s livelihood, survival, and culture may be adversely affected by the Tidal Hydroelectric Projects for which FERC has issued preliminary permits in Puget Sound. The Swinomish Indian Tribal Community is also by federal court order a co-manager of the fish and wildlife resources of the Skagit River Basin along with the Washington Department of Fish and Wildlife, Sauk-Suiattle Indian Tribe and Upper Skagit Indian Tribe.

The Swinomish Indian Tribal Community has intervened in P-12687, P-12689, P-12690, P-12692, and P-12698. All five of these projects are located in areas within the usual and accustomed grounds of the Swinomish Tribe. It is difficult to envision how a commercial tidal energy project with large underwater structures will adversely affect the Tribe’s rights to take fish and shellfish in these areas. During the preliminary permit process FERC should require the applicant to show how it will avoid tribal fisheries or clearly delineate the area that they would propose to preclude tribal fisheries. It is essential that applicants begin consultation with Tribes early in the preliminary permit process. The FERC should make it clear to applicants that the FERC has a trust responsibility to the tribes and that there is no legal authority for FERC to issue permits for projects that preclude Tribes from fishing in their usual and accustomed grounds.

In general the Swinomish Tribe agrees with the FERC’s stricter scrutiny approach to preliminary permits but there are some difficulties to this approach. The FERC is requiring applicants to file Notice of Intent (NOI) to license projects and a Pre-Application Document (PAD) within one year of Preliminary Permit issuance. Given the new and untested technology that these projects would utilize and intensive physical and environmental studies that will be required to site these projects it is unlikely that applicants will have enough information available to file a useful PAD or be ready to file a NOI in one year. The FERC should require the PAD and NOI at the end of the three year preliminary permit period.

The preliminary permit process does not require applicants for preliminary permits to contact affected tribes nor does the FERC send notice of preliminary permit applications to affected tribes. The Swinomish Tribe was only able to file timely request for intervention in the five projects because tribal staff read about the projects in local print media. The FERC should require preliminary permit applicants for tidal hydroelectric projects to contact affected tribes at the time they file for the preliminary permit.

The FERC has stated several times in relation to tidal hydroelectric projects that preliminary permits do not authorize any ground breaking activities including pilot projects. The Tulalip Tribes however, pointed out

Fisheries and Environmental Services Management for the Sauk-Suiattle and Swinomish Indian Tribes

that the FERC has already granted a waiver for a pilot project to a preliminary permit holder. The FERC should reiterate in its policy statement on preliminary permits for tidal hydroelectric projects that no ground breaking activities including pilot projects will be authorized.

The FERC has issued eight preliminary permits for tidal hydroelectric projects in Puget Sound within a short period of time. If these projects are constructed they will utilize new technology with unknown environmental effects. Many of the projects are in juvenile and adult migration routes for all five species of Pacific salmon and steelhead that return to Puget Sound rivers. These tidal hydroelectric projects may alter migration or cause direct mortality on migrating salmon and steelhead. The project areas may also be used as rearing areas for salmon, steelhead, forage fish and shellfish. The projects may reduce the productivity of rearing habitat or cause direct mortality of fish and shellfish rearing within the project area. The projects may also alter current patterns and sediment drift patterns. Potential adverse effects of these projects may be cumulative. The FERC should at this time begin an analysis of the potential cumulative effects of these projects in consultation with state and federal resource agencies and Indian Tribes.

The Swinomish Indian Tribal Community appreciates the FERC's Notice of Inquiry and the opportunity to comment on preliminary permits for tidal hydroelectric projects.

Sincerely,

**Stan M. Walsh
Fisheries Biologist
Skagit River System Cooperative**

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