

**REGION 10**

SEATTLE, WA 98101

February 13, 2024

Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Dear Debbie-Anne Reese:

The U.S. Environmental Protection Agency has reviewed the Federal Energy Regulatory Commission's February 2024 Seattle City Light; Notice of Intent to Prepare an Environmental Assessment and Notice of Revised Schedule (EPA Project Number 24-0007-FERC). FERC has revised the schedule for completion of the Environmental Assessment to April 30, 2024. EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

Seattle City Light filed an application for surrender of license for the Newhalem Creek Hydroelectric Project located on Newhalem Creek in Whatcom County, WA. The licensee proposes to remove the diversion dam and associated headworks structures, tailrace fish barrier, and certain overhead transmission lines; seal the rock shaft and power tunnel; decommission the access road and powerhouse; and leave the powerhouse, tailrace, and penstock in place.

The enclosed Detailed Comments include EPA's recommendations for evaluating and addressing potential impacts from project activities to resource areas in the NEPA document. Thank you for the opportunity to review the application for this project. If you have questions about this review, please contact Scott Campbell of my staff at (206) 553-6349 and campbell.scott.w@epa.gov, or me, at (206) 553-1774 and chu.rebecca@epa.gov.

Sincerely,

**REBECCA
CHU**

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REBECCA CHU
Date: 2024.02.13
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Rebecca Chu, Manager
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
Notice of Intent for the Newhalem Creek Hydroelectric Project
Whatcom County, Washington
February 13, 2024**

Water Resources

To fully characterize the impacts to water quality and quantity that may result from this project activities, EPA recommends the NEPA document describe the current conditions of the area (e.g. acreage of wetlands, ditched and natural streams, Clean Water Act (CWA) § 303(d) listed waters). EPA recommends the NEPA document characterize the direct, indirect, and cumulative impacts (e.g., altered flow regimes, increased water temperature) that each of the proposed alternatives will have on the current conditions and how each alternative mitigates impacts. Clearly explain how the project fits into broader goals and efforts related to watershed management and water conservation in the area.

CWA § 303(d)

The CWA requires states to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans called Total Maximum Daily Loads (TMDLs) to improve water quality. EPA recommends the NEPA document include information on CWA § 303(d) impaired waters in the project area and any efforts related to TMDLs. Discuss what effect, if any, project discharges may have on impaired waterbodies. EPA recommends the NEPA document describe existing restoration and enhancement efforts for those waters, how the proposed project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

CWA § 401

The CWA provides states and authorized tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into Waters of the United States (WOTUS). This section of the CWA is an important tool for states and authorized tribes to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. In developing the NEPA document, EPA recommends early coordination with the State regarding CWA § 401 for the purposes of streamlining regulatory processes.

CWA § 402

In Washington, EPA issues National Pollutant Discharge Elimination System (NPDES) permits for federally owned facilities and permits on tribal lands; EPA has delegated authority to issue other NPDES permits to the Washington Department of Ecology¹. EPA recommends the DEIS identify any discharges to WOTUS that are known, or are likely, to occur during construction and operation of the project and how these discharges would be managed and minimized. Identify the NPDES permits that will be obtained for the construction phase, new (or modifications to) existing permits for operations, and how any previous permit exceedances could be prevented by incorporating pollution prevention measures into the project.

¹ <https://www.epa.gov/npdes-permits/washington-npdes-permits>. Accessed 2/8/2024.

CWA § 404

CWA § 404 requires permits from the U.S. Army Corps of Engineers for the discharge of dredged or fill material into WOTUS. Wetlands and vegetated shallows are considered special aquatic sites under the CWA Section 404(b)(1) Guidelines (40 CFR 230). EPA recommends that the DEIS:

- Clearly identify any discharges to WOTUS that are known, or likely, to occur that will be subject to CWA § 404. Identify and describe the impact of those discharges, control measures to be employed to address those impacts, and best management practices to prevent discharge of water and pollutants.
- Structure the alternatives analysis consistent with requirements of both the CWA and NEPA.
- Describe the regulatory criteria and processes utilized to screen potential alternatives and thoroughly evaluate alternatives that would pose less adverse impacts.
- Describe how compensatory mitigation will be quantified and provided to offset impacts, with specific project examples and options, as available.

Aquatic Habitat

EPA recommends the NEPA document describe aquatic habitats in the affected environment (e.g., habitat type, plant and animal species, functional values, integrity) and the environmental consequences of the alternatives on these resources. Evaluate impacts to aquatic resources in terms of the impacted acreage and by functions performed. Project construction, operation, and maintenance may affect a variety of aquatic resources. The project has potential to degrade habitat for fish and other aquatic biota, and these resources may experience varying degrees of impacts and alteration of their hydrologic functions. For any impacts that cannot be avoided through siting and design, describe the types, location, and estimated effectiveness of best management practices applied to minimize and mitigate impacts to aquatic resources.

Biological Resources

EPA recommends the NEPA analysis identify and quantify which species and/or critical habitat might be directly, indirectly, or cumulatively affected and mitigate impacts to these species. Emphasize the protection and recovery of species due to their status or potential status under federal or state Endangered Species Act (ESA). In addition, discuss the project's consistency with existing laws and regulations.

EPA recommends the NEPA document analyze the impact of rehabilitation and operation on terrestrial and aquatic wildlife. Identify ESA species and critical habitat. EPA recommends coordinating with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Washington Department of Fish and Wildlife where there are potential project impacts to federal or state listed species or habitat impacts.

Air Quality

EPA recommends the NEPA document discuss ambient air conditions (baseline or existing), National Ambient Air Quality Standards and nonattainment areas, and potential air quality impacts of the proposed project for each alternative. Discuss the timeframe for release of estimated criteria pollutant emissions through the project's lifespan.

EPA recommends the NEPA document identify actions to minimize the impacts to local air quality, especially fugitive dust and diesel emissions. At a minimum, EPA recommends the NEPA document include a discussion of the following information about the project:

- Any adverse impact on air-quality-related values in a federal Class I area or state wilderness area.
- Annual emissions greater than the basic Prevention of Significant Deterioration emission thresholds that currently exist in the project area.
- Any violation of state or federal ambient air quality standards that may result from this project.
- Interference with the maintenance or attainment of state or federal ambient air quality standards in the analysis area.
- Increases in the frequency or severity of existing violations of state or federal ambient air quality standard in the project area.
- Exposure of nearby populations to increased levels of diesel particulate matter and other air toxics.
- Delays in the timely attainment of standard, interim emission reduction, or other air quality milestone promulgated by the EPA or state air quality agency; or exposure of sensitive receptors to substantial pollutant concentrations.
- Consideration of mitigation measures that may lessen the severity of the air impacts on the local environment.

Climate Change

Given the long-lived nature of hydroelectric infrastructure, it is important to consider future climate scenarios rather than current climate conditions only. EPA recommends the NEPA document consider ongoing and projected regional and local climate change and ensure robust climate resilience/adaption planning in the project design. Ongoing and projected regional and local climate impacts include, but are not limited to, drought, high intensity precipitation events, at-risk areas not yet designated as flood zones, and increased fire risk. Consideration of these impacts helps guide infrastructure decisions in vulnerable locations. Consider relevant state, tribal, or local adaptation plans. Discuss resilience measures, if found necessary, to protect the infrastructure investment from the effects of climate change (on the project).

Coordination with Tribal Governments

EPA encourages FERC to consult with and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the NEPA document describe the issues raised during the consultations and how those issues were addressed, consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

Environmental Justice

Executive Order 12898 *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994 was supplemented by Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, April 26, 2023 which directs federal agencies, as appropriate and consistent with applicable law: to identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of

Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.

EJScreen is EPA's nationally consistent environmental justice screening and mapping tool.² EJScreen offers a variety of powerful data and mapping capabilities that enable users to understand details about the population of an area and the environmental conditions in which they live. The tool provides information on environmental and socioeconomic indicators as well as pollution sources, health disparities, critical service gaps, and climate change data. The data is displayed in color-coded maps and standard data reports which feature how a selected location compares to the rest of the nation and state.

Assessing data from EJScreen is a useful first step in identifying locations in the area that may be candidates for further review or targeted outreach. EPA considers a project to be in an area of potential EJ concern when an EJScreen analysis for the impacted area shows one or more of the EJ Indexes at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJScreen analysis consider EJScreen information for the block group(s) which contains the proposed action(s) and a one-mile radius around those areas.

It is important to consider all impacted areas by the proposed action(s). Areas of impact can be very focused and contained within a single block group, or broader, spanning across several block groups and communities.³ Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.⁴ Therefore, additional review or outreach may be necessary for the proposed action. To address these potential concerns, EPA recommends the NEPA document:

- Apply methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report to this project.⁵ This report compiles methodologies from current agency practices for integrating EJ considerations in NEPA processes. The Promising Practices Report provides particularly useful guidance in assessing the potential direct and indirect impacts of a project, as well as the potentially increased vulnerabilities certain populations may have due to the cumulative impacts of environmental harm.
- Apply guidance from the Council of Environmental Quality's guidance document "Environmental Justice Guidance Under the National Environmental Policy Act" to this project (CEQ's EJ Guidance).⁶

² <https://ejscreen.epa.gov/mapper/>. Accessed 2/8/2024.

³ Agencies should define community as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions" (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

⁴ EPA's Technical Documentation for EJScreen: <https://www.epa.gov/ejscreen/technical-information-about-ejscreen>. Accessed 2/8/2024.

⁵ Promising Practices for EJ Methodologies in NEPA Reviews: https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf. Accessed 2/8/2024.

⁶ Environmental Justice Guidance Under the National Environmental Policy Act: https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf. Accessed 2/8/2023.

- Characterize the project site with specific information or data related to EJ concerns.⁷
- Describe potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Screen for and describe all individual block groups within or intersecting at least a 1-mile radius of the project.
- Describe individual block groups within the project area in addition to an area-wide assessment.
- Supplement data with state and county level reports and local knowledge such as Washington's Environmental Health Disparities mapping tool.⁸

It is important to consider both the potential short-term impacts of the proposed action(s) (e.g., construction noise, disrupted air quality, and viewscape), along with the potential long-term impacts (e.g., noise and air quality disruption due to vehicle traffic, disrupted access to areas of subsistence and traditional use by Indigenous populations) on communities with EJ concerns.

Meaningful Public Engagement

EPA recommends the NEPA document detail the opportunities for effective and meaningful public engagement for communities with EJ concerns, as described in the Promising Practices for EJ Methodologies in NEPA reviews and Executive Order 14096. We recommend the following measures to further advance meaningful involvement:

- Review and consider community feedback provided during the NEPA process. Ensure that the NEPA engagement approach is sensitive and responsive to the wellbeing of affected communities.
- Ensure that community feedback is reflected in the decision-making process. Design robust community engagement practices to maximize participation opportunities for communities that would be affected by the project, such as community-based workshops to facilitate discussion and issue resolution. Community-based workshops may also provide an opportunity to identify key issues and milestones for meaningful engagement in the NEPA process for the communities.
- Provide early and frequent outreach and engagement opportunities to collect and incorporate community feedback throughout the NEPA process and to maintain maximum transparency.
- Ensure that translation/interpretation services are provided to accommodate linguistically isolated populations.
- Address technology barriers that may prohibit participation from communities affected by the project.
- Ensure that meetings are scheduled at a time and location that is accessible for community participants, including scheduling meetings after work hours and on weekends as appropriate.
- Provide ample notice of meetings and commenting opportunities so that community members have sufficient time to prepare and participate.

⁷ For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>. Accessed 2/8/2023.

⁸ <https://fortress.wa.gov/doh/wtn/WTNIBL/>. Accessed 2/8/2023.

- Promote engagement opportunities within appropriate outlets used by affected communities, such as newspapers, radio, and social media.
- Ensure that all project-related information is conveyed using plain language so that community members of varied reading proficiencies can readily understand the project-related information.

Cumulative Impacts

EPA recommends that the NEPA document consider evaluation of impacts over the entire area of impact and consider the effects of the project when added to other past, present, and reasonably foreseeable future projects in the planning area. In the cumulative impacts analysis, identify how resources, ecosystems, and communities in the vicinity of the planning area have already been, or will be, affected by past, present, or future activities.

Monitoring and Adaptive Management

As the proposed project has the potential to impact environmental resources for an extended period, EPA recommends that the project be designed to include a monitoring program to ensure the efficacy of mitigation measures. Describe how the program will be used as an effective feedback mechanism so that the project can be adaptively managed over time, and any needed adjustments can be made to the project to meet environmental objectives throughout its lifespan.

Document Content(s)

24-0007-FERC_NOI_NewhalemCreekHydroelectricProject.pdf.....1