

April 27, 2020

Via E-Filing

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FEDERAL ENERGY REGULATORY COMMISSION
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Subject: **Skagit River Hydropower Project (FERC No. 553)
Notice of Intent to File License Application and Pre-Application Document**

Dear Secretary Bose:

Pursuant to Section 15(b) of the Federal Power Act (FPA), 16 U.S.C. § 808(b), and implementing regulations of the Federal Energy Regulatory Commission (FERC or Commission) at 18 CFR §§ 5.5 and 5.6, the City of Seattle, Washington, through its publicly-owned electric power utility Seattle City Light (City Light), herewith electronically files with the Commission its Notice of Intent to File a License Application (NOI) and Pre-Application Document (PAD) for the relicensing of the Skagit River Hydroelectric Project (FERC No. 553) (Project). The Project is located on the Skagit River in northwest Washington State. City Light will use the Integrated Licensing Process (ILP) to provide the framework for its consultation with agencies, tribes, and other interested parties (collectively, licensing participants or LPs) for the Project relicensing.

REQUEST FOR MINOR ADJUSTMENT TO ILP SCHEDULE

Together with meeting the milestones and schedule requirements of the ILP, City Light is fully committed to a relicensing that involves open communication and close coordination with LPs. As more fully described in the PAD, in fact, for the last 25 years City Light has been working closely with all the parties to the settlement agreements reached in the prior relicensing effort, which resulted in the Commission's issuance of a new 30-year license in 1995. More recently, City Light in January 2019 initiated an early cooperative Study Plan Development Process in preparation for initiating the formal relicensing effort. Participants in this process included representatives from the signatories to the 1991 settlement agreement and new parties interested in the Project. The purpose of this early process was to provide a forum, a structure, and the time to work together towards the goal of identifying resource issues that may warrant study during relicensing. The objectives were to: 1) develop a suite of agreed-upon issues and associated studies for inclusion in this PAD; 2) cooperatively develop study plans for studies that could potentially be implemented early to allow more time to gather relevant information; and 3) identify additional sources of relevant information.

Through this early effort, which involved over 30 meetings among the LPs from 2019-20, City Light has identified preliminary issues for study during relicensing. Those issues are covered by the 24 study plans proposed in the PAD.

Although City Light and the LPs made significant progress during their early cooperative efforts in 2019-20, LPs expressed concern that developing the environmental study plan during the early stages of the ILP will nonetheless be a challenge—particularly in light of the significant number of resource studies contemplated in the PAD.

City Light is committed to continuing the cooperative effort initiated in 2019 to achieve consensus on the ILP study plan. One element in the ILP that will make reaching study plan consensus a challenge is the very short regulatory deadline—only 20 days—for resource agencies to seek formal dispute resolution following FERC’s study plan determination. In light of the extensive study plan contemplated, City Light does not believe that 20 days gives LPs sufficient time to review FERC’s study plan determination, identify areas that may continue to be unresolved, and engage in meaningful discussions to resolve any outstanding issues before resource agencies are forced to invoke the ILP’s formal dispute resolution procedures.

To better meet the objective of the relicensing effort, City Light hereby requests the Commission to extend the 20-day deadline for agencies to seek formal dispute resolution under Section 5.14(a) of the ILP process (18 CFR § 5.14(a)) by 30 days—for a total period of 50 days from FERC’s study plan determination until the deadline for agencies to formally seek study plan dispute resolution before FERC. The resulting timeline—which would not impact the timing for the Initial Study Report or other subsequent ILP relicensing milestones—is set forth in Table 2.1-1 of the PAD.

City Light believes that this proposed extended period before formal dispute resolution on FERC’s study plan determination will result in significant benefits to the relicensing process, as follows:

- A 50-day period will allow approximately 30 days for City Light and LPs to work together informally to resolve any lingering study issues that may continue beyond the Commission’s study plan determination, before resource agencies must focus their efforts to prepare their formal dispute resolution requests.
- The 30-day opportunity for informal dispute resolution may avoid the need for formal dispute resolution altogether, saving time and resources, and allowing City Light to begin study plan implementation earlier than it otherwise would under established ILP procedures. At a minimum, an opportunity for informal study dispute resolution should help focus any issues that remain for the formal study dispute process.
- Unlike the ILP formal dispute resolution process, which is available only to agencies with authority under FPA sections 4(e) or 18, or under Section 401 of the Clean Water Act, City Light’s proposed informal dispute resolution opportunity would extend to all LPs.

- Even in the event that the ILP formal dispute resolution process becomes necessary, the additional 30 days will not affect the overall study implementation schedule. Without the additional 30 days, dispute resolution would end in June 2021; under City Light’s proposal, dispute resolution would conclude in July 2021. In both cases, City Light would have sufficient time to begin 2021 fieldwork for disputed studies following FERC’s resolution process. And, of course, the fieldwork schedule for undisputed studies will not be affected at all by this request.

City Light has consulted with LPs regarding this request to extend the 20-day deadline under 18 CFR § 5.14(a) to 50 days. LPs are supportive of this request. A record of consultation supporting this request is included herein.

REQUEST FOR DESIGNATION AS NON-FEDERAL REPRESENTATIVE

In conjunction with this filing, and as provided in 18 CFR § 5.5(e), City Light is requesting that the Commission designate City Light as the Commission’s non-federal representative for carrying out informal consultation, pursuant to: 1) Section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, § 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 500 CFR § 600.920; and 2) Section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR § 800.2(c)(4).

PUBLICATION AND DISTRIBUTION OF PAD AND NOI

The NOI and PAD, except for one appendix to the PAD, are being filed publicly. Appendix G of the PAD contains sensitive information related to archaeological and historic resources. Pursuant to 18 CFR § 388.112(b), City Light requests the Commission to designate this information as Privileged material, and to maintain this information as non-public.

In accordance with the Commission’s regulations, City Light is also transmitting electronic copies of the PAD (via email notification of posting on the relicensing website, <http://www.seattle.gov/light/skagit/relicensing/default.htm>) to relevant resource agencies, Native American tribes and First Nation, local governments, non-governmental organizations, and other interested parties (as identified on the attached Distribution List) concurrent with this filing. In addition, City Light will provide a paper copy of the PAD to Commission Staff in the Office of Energy Projects and Office of General Counsel – Energy Projects, as required by the Commission’s filing guidelines.

COVID-19 PUBLIC HEALTH EMERGENCY

This NOI and PAD are being filed in accordance with a deadline that is established by statute, and which the Commission cannot extend. City Light recognizes that the COVID-19 public health emergency has created significant and immediate challenges for LPs to meaningfully participate in this relicensing effort. Due to social distancing and stay-at-home considerations, for example, the Commission’s public scoping meeting and site visit (scheduled for the week of July 27, 2020) may need to be waived or deferred. Moreover, many federal, tribal, state and local government offices are focused on mission-

critical responsibilities to address this public health crisis, and many staff face technology and personal challenges in the current work environment.

The Commission has acknowledged the challenges of meeting regulatory requirements during this crisis. It has authorized entities to “seek waiver of Commission orders [and] regulations, as appropriate to address needs resulting from steps they take in response to the emergency conditions caused by COVID-19.”¹ The Commission has indicated that it will take action on any such request “as expeditiously as possible.”²

As of the filing date of this NOI and PAD, City Light has not yet identified any specific relief in the relicensing effort that is needed to address COVID-19. However, LPs’ circumstances and needs are dynamic and changing, and it is entirely feasible that such relief may be called for. City Light continues to communicate with LPs closely. Should a need arise to make adjustments to the relicensing process to facilitate LPs’ focus on mission-critical activities at this time, while preserving the need for time and resources devoted to this important relicensing effort, City Light will at that time request for appropriate relief from the Commission.

CONCLUSION

City Light looks forward to working with the Commission and other interested parties on the relicensing of the Project. If there are any questions regarding the NOI or PAD, please contact Andrew Bearlin by phone at (206) 684-3496 or by email at Andrew.Bearlin@seattle.gov.

Sincerely,



Andrew Bearlin
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Seattle City Light

Enclosure

cc: Distribution list (see attached)

¹ Supplemental Notice Granting Extension of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answer Period, Docket No. AD20-11-000 (issued April 2, 2020).

² *Id.*

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