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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

February 26, 2025

Ms. Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
Via electronic submission

Re: Response to OPALCO Tidal Energy Project No. 15368-000

Dear Secretary Reese,

The Swinomish Indian Tribal Community has reviewed Orcas Power & Light Cooperative's (Opalco) responses to its letter dated October 29, 2024 and provides the reply below. Overall, the Tribe remains very concerned about the overwhelmingly non-responsive nature of Opalco's reply to the the Tribe's detailed concerns and questions in its October 29th letter. The Tribe is also concerned that meaningful consultation is not possible without the requested information, all of which is very basic and preliminary in nature.

Opalco has deferred any meaningful response to our information requests and stated concerns until the Draft License Application (DLA). This failure to engage in any meaningful discussion about the project or share any substantive information greatly limits the Tribe's ability to engage in the process and instead results in **the Tribe taking the formal position to object to the project.**

The Tribe requests a meeting with OPALCO *after* all of the requested information is provided. If this information will only be available in the DLA, we ask for a copy as soon as possible and request at least ninety (90) days to review, analyze and provide comments in response to it. Below are additional observations on OPALCO's responses, along with recommendations to promote genuine and meaningful engagement in Tribal consultation.

General Observations

Inappropriate Reliance on the DLA: OPALCO frequently defers to the DLA for detailed responses but does not provide interim measures or any measure of pre-DLA transparency.

Engagement Gaps: There appear to be limited effort to engage the Swinomish Tribe as equal partners in decision-making, particularly on critical issues like tribal treaty rights and environmental protection, mitigation and enhancement measures.

Inadequate Detail: Many responses lack substantive responses, commitments or explanations, which hinders trust and collaboration, as well as meaningful assessment of impacts to treaty reserved aquatic resources.

A more detailed reply to OPALCO's response to the Tribe's individual comments is below. However, because of the overwhelmingly non-responsive nature of OPALCO's response, the Tribe did not reply to all of the responses.

Thank you for your consideration of these comments.

Sincerely,



Amy Trainer, Environmental Policy Director
Swinomish Indian Tribal Community

Swinomish Indian Tribal Community Comments	Orcas Power & Light Cooperative Responses	Swinomish Indian Tribal Community Response
1) Project Design, Deployment Schedule, and Long-term Impact		
a) The pre-project application mentions a single 2.4 MW floating tidal turbine being deployed for up to 10 years under FERC's pilot process. The possibility of scaling the project to three (3) separate units in the final design was mentioned.	OPALCO has no plans to scale up the project to multiple units. The proposed project is for one unit for up to 10 years.	This is contradictory to materials that OPALCO submitted to FERC, as well as conversations the Tribe has had with OPALCO in previous meetings. The Tribe requests copies of all future plans to understand the long-term impacts of this project, which includes looking beyond the 10-year permit period.
i) The Tribe requests that FERC require the applicant to explain in detail how its proposed transition from one (1) to three (3) units would occur and on what timeline.	See response to comment 1) a)	This is completely non-responsive to the Tribe's comment and request.
ii) The Tribe requests an explanation using best scientific literature of the level of additional environmental impact analysis that FERC would require prior to any such project expansion.	See response to comment 1) a)	This is completely non-responsive to the Tribe's comment and request.

<p>iii) The Tribe requests that FERC require that the applicant to fully evaluate and mitigate the cumulative environmental impacts of any additional units that may planned to be introduced at a future date.</p>	<p>See response to comment 1) a)</p>	<p>This is completely non-responsive to the Tribe's comment and request.</p>
<p>b) The deployment of anchors and mooring systems will likely have a significant impact to the benthic environment. The description of anchors includes both gravity and drilled rock anchors.</p>	<p>A detailed analysis, using the best scientific information, will be used to evaluate potential effects of the anchoring and mooring systems to the benthic environment in the Draft License Application.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>
<p>i) Have site-specific studies using best scientific literature been conducted to assess how these anchor systems will affect the seabed and benthic habitats essential to fish populations and other marine life, including kelp beds, shellfish and groundfish?</p>	<p>Benthic studies and monitoring will be proposed in the DLA to assess potential effects of anchoring systems. These studies and monitoring will be based upon the best scientific information.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>
<p>ii) If those studies have been performed, the Tribe requests copies; if those studies have not been performed, the Tribe requests that FERC require the applicant to engage with the Tribe and provide the opportunity to comment on the scope of those studies to ensure that all appropriate considerations are taken into account.</p>	<p>All consulting and interested parties will have the opportunity to comment on the scope of all proposed studies through the FERC comment period after the DLA submittal. However, OPALCO also will host individual meetings with the Tribes, upon request, to discuss the proposed studies or any other Tribal concerns.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information. The Tribe is aware that the applicant deployed sea floor spiders and a mid-water</p>

		<p>buoy to collect site-specific water quality, tidal and benthic information.</p> <p>The Tribe requests a summary of data collected to date.</p>
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Swinomish Indian Tribal Community Comments	Orcas Power & Light Cooperative Responses	Swinomish Indian Tribal Community Response
<p>c) The installation of the 3.3-mile-long subsea cable to transmit energy from the tidal unit to the onshore conduit connection site presents another area of concern. Submarine cables can impact the marine environment by disturbing the seabed and sediment transport.</p>	<p>A detailed analysis, using the best available scientific information, will be used to evaluate potential effects of the subsea cable on the marine environment in the DLA.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>
<p>i) The Tribe requests that FERC require the applicant to perform a detailed analysis using best scientific literature of the known and expected effects on benthic habitats and species, including sediment disturbance and recovery times for affected areas.</p>	<p>See response to comment 1) b) i)</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p> <p>The Tribe requests a copy of the outline and proposed study details to address our concerns about impacts to benthic habitats and species <i>prior to</i> the DLA.</p>
<p>ii) The Tribe requests that FERC require the applicant to share its detailed plan using best scientific literature to mitigate the potential/probable harm to the marine environment during and after the installation of this cable.</p>	<p>OPALCO will propose mitigation measures as it relates to cable installation, using the best available scientific information, in the DLA.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p> <p>OPALCO should be collaborating and coordinating the required Protection, Mitigation & Enhancement (PM&E) measures</p>

		with the Tribe, but it is failing to do so.
2) Impacts on Tribal Fishing Rights and Marine Life		
a) The Tribe is particularly concerned about the potential disruption to Tribal fishing rights in the Salish Sea. The Rosario Strait area is not only culturally significant but also home to important ESA-listed salmon populations that have sustained the Tribe's cultural lifeways since time immemorial.	The DLA will acknowledge and emphasize the importance of Tribal fishing treaty rights, tribal resources, and culturally significant resources in this area and the need to engage the Tribal Nations to identify potential impacts.	The Tribe finds this to be completely non-responsive and insufficient. Treaty rights and endangered species are foundational concerns, yet OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary specific measures to address this core concern. The Tribe <u>objects to this proposal</u> unless and until OPALCO has presented meaningful PM&E measures that address the proposed project's direct interference with Treaty fishing rights.
i) The Tribe requests that FERC ensure that the applicant's installation and operation of the turbine and associated cabling infrastructure does not adversely impact the Tribe's traditional fishing grounds.	OPALCO is committed to continued discussions with the Tribes on the installation and operations of the anticipated device to better understand the potential impacts, and to seek avoidance, minimization, or mitigation measures where/if possible. Furthermore, the DLA will acknowledge and emphasize the importance of Tribal fishing treaty rights, tribal resources, and culturally significant resources in this area and the need to engage the Tribal Nations to identify potential impacts.	The Tribe finds this to be completely non-responsive and insufficient. Treaty rights species are foundational concerns, yet OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary specific measures to address this core concern. The Tribe <u>objects to this proposal</u> unless and until OPALCO has presented meaningful PM&E measures that address the proposed project's direct interference with Treaty fishing rights.

<p>ii) The Tribe requests that FERC ensure that the applicant engages with Tribal fishers regarding potential conflicts with fishing activities, including</p> <p>but not limited to crab pot deployment and gillnet fishing, during pre-permit activities, construction and throughout any future operations.</p>	<p>OPALCO looks forward to continued discussions on the installation and operations of the anticipated device to better understand the potential impacts and avoidance, minimization, or mitigation measures where/if possible. Currently, we have received preliminary information from several of the Tribal Nations from their fisheries commissions and look forward to additional feedback and engagement with Tribal fishers to identify additional information about potential conflicts with fishing activities.</p>	<p>Treaty rights species are foundational concerns, yet OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary specific measures to address this core concern.</p> <p>The Tribe <u>objects to this proposal</u> unless and until OPALCO has presented meaningful PM&E measures that address the proposed project's direct interference with Treaty fishing rights.</p>
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Swinomish Indian Tribal Community Comments	Orcas Power & Light Cooperative Responses	Swinomish Indian Tribal Community Response
<p>b) Marine mammals on the federal Endangered Species Act list, including the endangered Southern Resident Killer Whale and the threatened humpback whale, frequent the waters around the project area. These and other marine mammal species are highly vulnerable to both acoustic disturbances and habitat degradation.</p>	<p>A detailed analysis, using the best available scientific information, will be used in the DLA to evaluate potential effects to marine mammal species in regard to acoustic disturbance and habitat degradation.</p>	<p>The Tribe finds this to be completely non-responsive and insufficient.</p> <p>OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary specific measures to address this core concern.</p>
<p>i) The Tribe requests that FERC require the applicant take all necessary measures using best scientific literature to avoid, minimize, and mitigate any adverse effects on these marine mammals during the installation and operation of the tidal turbine, including by avoiding in-water work when whales are present or anticipated to be present or migrating in the area.</p>	<p>OPALCO will propose all necessary measures, using best available scientific information to avoid, minimize, and mitigate (where/if possible) any adverse effects on these marine mammals during the installation and operation of the tidal turbine.</p>	<p>The Tribe finds this to be completely non-responsive and insufficient.</p> <p>OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary to address this core concern, and has conditioned its implementation of necessary measures on a “where/if possible” caveat that is far too open-ended.</p>
<p>ii) The Tribe requests that FERC require the applicant to utilize acoustic monitoring based upon best scientific literature to ensure marine mammals are not disturbed.</p>	<p>OPALCO will propose an acoustic monitoring plan as part of its DLA based upon best available scientific information.</p>	<p>The Tribe finds this response to be insufficient.</p> <p>OPALCO has failed to commit to provide basic information <u>now</u> or to address the requisite PM&Es that will be necessary specific measures to address this core concern.</p>
<p>iii) The Tribe requests that FERC require the applicant to present a detailed plan using best scientific literature for how it anticipates avoiding potential entanglement of all marine mammals with its system of anchor lines and buoys.</p>	<p>OPALCO will propose all necessary measures, using best available scientific information, to avoid potential entanglement of all marine mammals with its system of anchor lines and buoys.</p>	<p>The Tribe finds this response to be insufficient.</p> <p>OPALCO has failed to commit to provide basic information <u>now</u> or to address the requisite PM&Es that will be necessary specific measures to address this core concern.</p>

3) Benthic Impacts from Anchoring		
<p>a) Section 4.3 of the Project Description mentions the use of gravity and rock anchors to stabilize the tidal turbine. The use of gravity anchors, which will be connected to the tidal turbine by steel chain mooring lines, poses additional risks as they are likely to drag along the seafloor during slack tide. The proposed four (4) rock bolt anchors (steel vertical piles) are to be drilled into the seabed, with each proposed anchor measuring 20-feet long by 23-inches in diameter. These anchoring systems raise concerns about potential long-term damage to benthic habitats critical to ESA-listed species, such as Chinook salmon and rockfish, as well as other tribally important species.</p>	<p>See response to comment 1) b)</p>	<p>The Tribe finds this to be completely non-responsive and insufficient.</p> <p>OPALCO has failed to commit to provide basic information and address the requisite PM&Es that will be necessary to address this core concern</p> <p>Without proactive engagement or details on preliminary studies, this response does not meet the prior commitments from Opalco for addressing potential adverse impacts to the marine environment.</p>

Swinomish Indian Tribal Community Comments	Orcas Power & Light Cooperative Responses	Swinomish Indian Tribal Community Analysis
<p>i) The Tribe requests that FERC require the applicant to provide additional information about how it plans to minimize damage to these sensitive ecosystems using best scientific literature during the anchoring process.</p>	<p>See response to comment 1) b)</p>	<p>The Tribe finds this to be completely non-responsive and insufficient.</p> <p>Without proactive engagement or details on preliminary studies, this response does not meet the prior commitments from Opalco for addressing potential adverse impacts to the marine environment.</p>
<p>ii) The Tribe requests that FERC require the Applicant to submit a detailed plan for the techniques it will use based upon best scientific literature to rehabilitate benthic habitats, both after construction is complete and throughout proposed operations.</p>	<p>Plans to rehabilitate benthic habitats will be created using the best available scientific information and are subject to review and approval from regulatory agencies and consulting parties prior to project deployment.</p>	<p>Without proactive engagement or details on preliminary studies, this response does not meet the prior or stated commitments from Opalco for addressing potential adverse impacts to the marine environment.</p>
<p>iii) The Tribe requests that FERC require the applicant to provide detailed hydrodynamic modeling using best scientific literature about how the anchored turbine will impact local tidal flows and sediment transportation.</p>	<p>The proposed deployment of one device is anticipated to have de minimis impacts to local tidal flows and sediment transportation of Rosario Strait. However, further analysis will be included in the DLA.</p>	<p>The Tribe finds this to be completely non-responsive and insufficient.</p> <p>Without proactive engagement or details on preliminary studies, this response does not meet the prior commitments from Opalco for addressing potential adverse impacts to the marine environment.</p>
<p>iv) The Tribe requests that FERC require the Applicant to share any preliminary data reports from its environmental monitoring site assessments from the seafloor spider and deepwater buoy deployed this past summer.</p>	<p>All resource characterization data will be provided in the DLA.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>

<p>v) The Tribe requests that FERC require the Applicant to provide additional information regarding the proposed routing of the seafloor cable as shown in Exhibit 3C, including details about this proposed alignment will avoid important rockfish habitat and known mapped kelp beds.</p>	<p>The proposed routing of the seafloor cable will be included in the DLA with details about how it will avoid kelp beds. The cable route will be designed to minimize and avoid important cryptic (e.g. rocky outcrops, reefs, tec.) habitat.</p>	<p>Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>
<p>4) Cultural and Tribal Engagement</p>		
<p>a) The deficiency letter from FERC highlighted the need to engage with additional Tribal nations potentially impacted by the project.</p>	<p>OPALCO has expanded its engagement efforts to include additional interested Tribal Nations. In addition to the Tribal Nations listed in the Preliminary Permit Application (PPA), we have initiated contact and shared materials with the following Tribal Nations: Muckleshoot Indian Tribe; Nooksack Indian Tribe, Sauk-Suiattle Indian Tribe, Skokomish Tribe, Snoqualmie Indian Tribe, Stillaguamish Tribe of Indians, and the Upper Skagit Tribe.</p>	<p>Opalco efforts remain insufficient. Many of the tribal nations listed by Opalco do not have adjudicated treaty rights to the project area.</p> <p>This non-responsive to FERC's deficiency letter.</p>

Swinomish Indian Tribal Community Comments	Orcas Power & Light Cooperative Responses	Swinomish Indian Tribal Community Response
<p>i) The Tribe requests that FERC require the applicant to provide more detail on its Tribal engagement process to date. Specifically, the Tribe is concerned about the depth and breadth of consultation with local Tribal communities, including whether there has been robust engagement that goes beyond informational meetings.</p>	<p>The DLA will include detailed information on the meetings and engagement efforts with the Tribal Nations including feedback and concerns shared to date. OPALCO's goal has been to share all information with the Tribal Nations early and often in the spirit of being transparent. In meetings with Tribal Nations, we have shared information about the project, provided a platform for questions, and asked how best to engage meaningfully throughout the process including who should be involved from each of the Tribal Nations. Our meetings have evolved over time as more information has become available and we expect that to continue through the licensing process. OPALCO has requested feedback and attempted to create space for open discussion on concerns and additional information or avenues for engagement and will continue to seek and receive specific direction from the Tribes on how best to expand the depth and breadth of our engagement.</p>	<p>This is completely non-responsive to the Tribe's comment and request. Deferring a response to the Tribe's concerns until the DLA does not satisfy the need for basic information and transparency. The fact is that Opalco has shared very little substantive information about its project. The Tribe does not foresee any meaningful consultation with OPALCO on this project until we have this information.</p>
<p>iii) The Tribe requests that FERC require the Applicant to conduct a formal cultural resource assessment of the project area to ensure that no culturally significant sites will be impacted or affected by construction or operation. If this assessment has already been performed, the Tribe requests that the report or findings be shared.</p>	<p>OPALCO is in the process of conducting a cultural resources assessment of the Project area based on existing information that will be included in the DLA. We anticipate initiating compliance with Section 106 of the National Historic Preservation Act (NHPA) in the final license application and completing a full and comprehensive cultural resources assessment to identify potential effects to historic properties for the Area of Potential Effects in consultation with the</p>	<p>It is not adequate to wait until the conclusion of the DLA to conduct a formal Section 106 cultural resource assessment, nor to wait until the final license application (FLA) is submitted.</p> <p>The Tribes requests that Opalco let DAHP and a qualified consultant coordinate the Section 106 requirements. It is essential to ensure appropriate site assessment and preservation techniques are implemented. Before</p>

	<p>Tribal Nations and Department of Archaeology and Historic Preservation. Copies of the report and correspondence will be provided to the Tribal Nations.</p>	<p>meaningful consultation can resume, it is imperative that the Tribes have the opportunity to review the cultural assessment.</p>
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