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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 *

April 3, 2025

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

Re: Request for Comment Period Extension re: OPALCO Tidal Energy Project
Description and Draft License application, Project No. 15368-000

Dear Secretary Reese,

On behalf of the Swinomish Indian Tribal Community (“Swinomish” or the “Tribe”), I am writing to request an extension of time until September 30, 2025 to review and provide comments on the Draft License Application for the Rosario Strait Tidal Energy Project proposed by Orcas Power and Light Cooperative (“OPALCO” or the “Applicant”), Project No. 15368-000 (the “Project”). The Applicant announced for the first time in its Draft License Application filing of March 24, 2025 that it seeks a waiver from numerous provisions of the Integrated License Process (“ILP”) under §5 of the Federal Power Act. Waiving these steps in the ILP process substantially shortens the timeframe to review and provide comments on entirely new information about a new technology that is currently untested in the critical habitat of multiple Endangered Species Act-listed species in Washington waters. For the reasons below, we respectfully seek this time extension to file comments on the DLA and ensure that appropriate Protection, Mitigation & Enhancement (“PM&E”) Measures are included in the potential FERC license for the Project.

Swinomish Tribal Community Past Requests for Information

After reviewing the Applicant’s pre-project application documentation last fall, the Tribe had several questions and concerns regarding the potential effects on the Tribe’s Treaty rights and interests, specifically related to the project design, location, deployment schedule, and overall impacts on marine life and potential interference with Treaty fishing activities. On October 29,

2024 the Tribe filed a letter with FERC seeking clarity and specific details about the Project and its proposed studies because they may have significant implications for Treaty-protected resources, culturally important marine species, and the environmental health of the northern Salish Sea. The Tribe requested that Federal Energy Regulatory Commission (“FERC”) require OPALCO to address those concerns and questions.

On December 13, 2024, the Applicant filed a letter with FERC purportedly responding to the Tribe’s October 29th letter. In reality, the Applicant’s letter contained no substantive information but did request consultation with the Tribe. On February 26, 2025, the Tribe filed a letter with FERC, highlighting how the Applicant failed to respond substantively to the Tribe’s numerous questions and concerns contained in its October 29, 2024 letter, and how the Applicant deferred any meaningful discussion of all matters, concerns and questions raised by the Tribe until the Applicant filed its DLA. The Tribe’s February 26, 2025 letter to FERC made clear that meaningful consultation with tribal nations cannot occur until and unless adequate substantive information has been provided and there is a sufficient opportunity to review and analyze that information.

Basis for Time Extension Request

The Tribe seeks an extension of time to file comments on the Applicant’s DLA until September 30, 2025 for three key reasons. First, it is only with the DLA filing last week that the Tribe has been made aware that the Applicant seeks an expedited – and significantly truncated – public review and comment timeline. At no point in the past two-plus years of conversation has the Applicant ever mentioned that it would bypass the normal Integrated License Process under §5 of the Federal Power Act to shorten the public engagement timeline. The DLA is the first information that the Tribe has received that the Applicant is seeking waivers of numerous ILP requirements under §5 via the guidance in FERC’s 2008 White Paper on “Licensing Hydrokinetic Pilot Projects” to allow it to fast-track its study and monitoring plans and project approval. Thus, despite the Tribe’s repeated requests to participate in study and monitoring plan creation and to receive substantive information about the Project far ahead of the Applicant’s DLA filing, no substantive information was shared and no opportunities to collaborate on study and monitoring plans were granted by the Applicant. The Tribe believes that the pilot project timeline waivers that Applicant seek present an unreasonably short timeframe in which meaningful review and government-to-government consultation can occur. Thus, the Tribe objects to the Applicant’s request to expedite public review and comment.

Second, the tidal turbine technology that Applicant proposes to deploy in Rosario Strait is new technology that has not been tested in Washington waters. The Project, which will have a footprint of several dozen acres, is proposed for the middle of designated “critical habitat” for four (4) Endangered Species Act-listed (“ESA-listed”) species. This technology has not been tested near migrating juvenile and adult ESA-listed Chinook salmon, a Treaty resource for

Swinomish and many other treaty tribes, or the critically endangered Southern Resident killer whales that rely on them as primary prey. Nor has the technology been tested near numerous other Treaty protected marine resources, including other salmon species, halibut, and crab. Thus, we believe that fast-tracking public review and comments for this new technology is not appropriate.

Third, the Applicant seeks a 10-year pilot project permit for this new in-water technology. That is a significant amount of time to merely *test* a new technology. And, while this may be designated a “pilot” project the reality is that the Project would be a full-sized tidal turbine operating in the waters. Applicant has indicated that it intends to seek a full, formal license from FERC after the pilot permit ends, meaning that once the technology is deployed, it may not leave the water for several years or decades. As a result, it is imperative that if this new technology is to be given the privilege of operating in adjudicated usual and accustomed fishing areas of eight (8) tribal nations, including Swinomish, the DLA review and comment period must allow time for thorough and thoughtful review. Indeed, before the Tribe can support up to a 100-acre incursion into its adjudicated Treaty fishing area, it must fully understand the risks and be afforded the opportunity to ensure that all proposed PM&E measures are adequate to protect the Tribe’s resources and interests.

About the Swinomish Tribe

The Swinomish Indian Tribal Community (“Swinomish” or “the Tribe”) is a federally recognized Indian tribe and political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which among other things reserved fishing, hunting and gathering rights and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the Lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters. Since time immemorial, the Swinomish Tribe and its predecessors have occupied and utilized vast areas of land and water in northern Salish Sea, including along the Canadian border, to support the Swinomish way of life. Swinomish is the primary guardian of the Skagit River ecosystem, working to ensure that appropriate water quality, water quantity, estuary and floodplain habitats, and the nearshore environment are all protected and restored so that the Tribe’s cultural lifeways can continue for the next seven generations.

Conclusion

The Tribe understands the potential benefits of clean energy development, but we believe a thorough review of the Project’s design and its anticipated environmental impacts is necessary to ensure that the rights of the Swinomish Tribal Community, including its Treaty fishing rights, access to exercise those rights and cultural resources, are protected and not adversely impacted.

While we appreciate OPALCO's initiative to contribute to clean energy goals, Swinomish believes it is essential that the environmental and cultural rights of the Swinomish Tribal Community are embraced and prioritized in this process. As a result, we believe that more, not less, time to review the DLA is needed to ascertain whether the questions and concerns we raised months ago, the many other questions that are certain to arise with review of recently-received documents, as well as adequate PM&E measures, have been adequately addressed in the DLA. As a result, we seek an extension of time for the DLA comment deadline to September 30, 2025.

Thank you for your consideration of our request.

A handwritten signature in cursive script, appearing to read "Amy Trainer", followed by a horizontal line extending to the right.

Amy Trainer, Environmental Policy Director
Swinomish Indian Tribal Community