



SKAGIT COUNTY BOARD OF COMMISSIONERS

DON MUNKS, First District
KENNETH A. DAHLSTEDT, Second District
SHARON D. DILLON, Third District

October 24, 2008

Puget Sound Energy
P.O. Box 97034
Bellevue WA 98009-9734

RE: Objection to FERC License

Consistent with the terms of the "Baker River Hydroelectric Project Comprehensive Relicensing Agreement" dated November 30, 2004 (hereinafter, "Settlement Agreement"), we have reviewed the Federal Energy Regulatory Commission's "Order on Offer of Settlement, Issuing New License, and Dismissing Amendment Application as Moot," dated October 17, 2008 (hereinafter, "FERC License").

For the reasons discussed below, the FERC License is inconsistent with the Settlement Agreement.

Puget Sound Energy's operation of the Baker River system has a direct and immediate relationship to the risk of catastrophic flood our community faces, and Skagit County has consistently sought an enforceable guarantee that PSE will work in good faith to provide additional flood storage in the Baker River system. With this in mind, PSE's promises related to flood control remain the central reason our community consented to the Settlement Agreement, and, thus, the FERC License.

In the Settlement Agreement, PSE promised to provide 29,000 acre/feet of additional flood storage in the Lower Baker Reservoir “only after suitable arrangements have been made to compensate the licensee...” Settlement Agreement, Article 107(b). This language was duly incorporated in the FERC License.

Absent funding, the notion of additional flood storage is a hollow promise. For just this reason, Skagit County negotiated and obtained PSE’s promise that PSE would mobilize its extensive lobbying resources and political reach to secure funding necessary to realize additional flood storage.¹ This was expressly incorporated in the Settlement Agreement. See, November 15, 2004 PSE–Skagit County Agreement, Appendix B to Settlement Agreement at ¶ 3.² For reasons we find extremely difficult to comprehend, this was not included in the FERC License.

The FERC License inaccurately characterizes the November 15, 2004 document as “a private agreement between Puget and Skagit County that is not intended to be included in any new license.” See, FERC License ¶ 27. Presumably, this inaccuracy is based on PSE’s representations to FERC staff.

¹ PSE has taken the position that there will be no additional flood storage absent completion of the U.S. Army Corps of Engineers’ General Investigation Study, and PSE is therefore obligated under the Settlement Agreement to proactively lobby for funding for completion of the GI study. County staff has raised this on multiple occasions with PSE staff and has requested PSE’s assistance, but have never received so much as a response from PSE staff. This is unsatisfactory compliance with our agreement.

² The relevant portion of which states as follows:

PSE and the County shall work cooperatively to seek funding from federal and state sources for the capital costs of spillway modifications at Lower Baker Reservoir necessary for the provision of 29,000 acre/feet of storage in the Lower Baker Reservoir, as described in Proposed Article 107. As part of this effort, PSE, in response to a request from the County, shall upon reasonable notice communicate its support for such funding in oral communications, letters, testimony and other available means to appropriate federal and state government officials, federal and state legislators, and the media. Upon reasonable notice, PSE shall send a representative to accompany the County in meetings with federal and state government officials and federal and state legislators to express PSE’s support for funding of the capital costs of spillway modifications at Lower Baker Reservoir.

This is inconsistent with both the plain language of the Settlement Agreement, as well as Skagit County's intent in signing the Settlement Agreement. Appendix B is dated November 15, 2004, prior to the November 30, 2004 Effective Date of the Settlement Agreement. The Appendix B document was expressly incorporated in the Settlement Agreement, and was expressly made part of the Settlement Agreement by its own terms. On its face, the November 15, 2004 Appendix B agreement is an indivisible component of the Settlement Agreement, and is binding on all parties.

PSE obtained the FERC License by presenting FERC with the Settlement Agreement. See, FERC License at ¶2("Puget's license application is based on a comprehensive Settlement Agreement filed November 30, 2004...") It was Skagit County's intent at the time the Settlement Agreement was signed and continuing expectation today that *all* PSE's flood control promises in the Settlement Agreement are to be included in the FERC License, not merely those PSE chooses to include.

Our concerns about the enforceability of PSE's flood control promises takes on a much higher significance given PSE's intention to sell a controlling interest to a foreign private equity firm with little connection to this community. PSE's promises must run with the License, absent which our community runs the risk that the basic intent of these promises will not be fully honored by PSE's new ownership.

Our concerns are further supported by PSE's inaction since the Settlement Agreement was executed in 2004. Despite our requests in correspondence from County staff and from individual commissioners in various meetings, PSE has not undertaken any appreciable effort to help secure the funding for the additional 29,000 acre/feet of flood storage. This does not bode well for future cooperation.

The FERC License fails to include an enforceable obligation on the Licensee to seek funding for the 29,000 acre/feet of additional flood storage in the Lower Baker Reservoir. For this reason, the FERC License is inconsistent with the Settlement Agreement, of which we hereby provide notice pursuant to Settlement Agreement ¶ 3.4.2.

This letter also serves as our dispute resolution notice pursuant to Section 4 of the Settlement Agreement. Because the FERC License was granted by FERC on the basis of the Settlement Agreement,³ the County reserves the right to administratively appeal and/or seek judicial review outside the Settlement Agreement's dispute resolution provisions, as contemplated by Settlement Agreement ¶ 3.4.2.

We look forward to your soonest response, consistent with the Settlement Agreement.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



DON MUNKS, Chair



KENNETH A. DAHLSTEDT, Commissioner



SHARON D. DILLON, Commissioner

cc: Settlement Agreement Parties
Federal Energy Regulatory Commission
Prosecuting Attorney
County Administrator
Public Works Director
Mayor Ed Brunz, City of Burlington
Mayor Bud Norris, City of Mount Vernon
Mayor Mike Anderson, City of Sedro-Woolley

³ See, FERC License ¶ 2 ("Puget's license application is based on a comprehensive Settlement Agreement filed November 30, 2004..")