

**WRITTEN TESTIMONY BY
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**LEGISLATIVE OVERSIGHT HEARING ON
KEEPING HYDROPOWER AFFORDABLE AND RELIABLE:
THE PROTECTION OF EXISTING HYDROPOWER INVESTMENTS AND
THE PROMOTION OF NEW DEVELOPMENT**

**BEFORE THE COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

SEPTEMBER 19, 2013

Introduction

Good morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to speak with you today about new hydropower development, specifically the role of federal natural resource agencies with mandatory conditioning authority in the licensing and related approvals for the development of the Enloe Hydroelectric Project (Enloe Project). My name is John Grubich, and I am the General Manager of the Public Utility District No. 1 of Okanogan County (District), in Washington. Thank you very much for the opportunity to provide you background on the Enloe Project, describe its potential for generating green renewable power, and detail the District's issues with the multiple federal and state licensing and permit processes that impose significant costs and uncertainties for the District in its pursuit of development of the Enloe Project.

Background on Enloe Hydroelectric Project

The proposed Enloe Project is a 9 MW hydroelectric facility at the existing Enloe Dam on the Similkameen River, near the Canadian border in North Central Washington. In 2005, the District renewed its efforts to obtain a Federal Energy Regulatory Commission (FERC) license to restore the Enloe Project. The history of hydropower development at the Enloe Dam site spans the last century. Originally developed in 1906, the Enloe Project ceased operation in 1958 and most of the equipment at the existing Enloe Dam was removed. The District's proposed design for redeveloping the Enloe Project would provide important environmental benefits and, with the restoration of crest gates, more than double the previous project's generating capacity to 9 MW.

The District filed the license application with FERC in August, 2008, utilizing the FERC's Traditional Licensing Process. Throughout the licensing process, the District has consulted extensively with many federal and state entities including: Native tribes in Washington and Canada; the Department of Interior's Bureau of Land Management (BLM, the underlying landowner); National Oceanic and Atmospheric Administration

Fisheries (NOAA Fisheries) and the Fish and Wildlife Service (under Section 7 of the Endangered Species Act); U.S. Army Corps of Engineers (under Section 404 of the Clean Water Act); Washington State Department of Ecology (Ecology) (under Section 401 of the Clean Water Act and state law); Washington Department of Fish and Wildlife; Washington Department of Natural Resources; Washington State Historic Preservation Office (under Section 106 of the National Historic Preservation Act); and Okanogan County.

FERC issued a Final Environmental Assessment (EA) for the Project under the National Environmental Policy Act (NEPA) on August 31, 2011. Issuance of a Final Programmatic Agreement under the National Historic Preservation Act followed in January, 2012 and Ecology issued the required Water Quality Certification under Section 401 of the Clean Water Act on August 20, 2012. Notwithstanding the extensive application and consultation process that produced a general consensus for the mitigation measures proposed and endorsed by the District and included in the certification, the Section 401 Water Quality Certification was appealed by a group of nonprofit organizations. After over a week of hearings and months of costly preparation by the District, on July 23, 2013, the Washington State Pollution Control Hearings Board (PCHB) issued an order affirming the Section 401 Water Quality Certification “subject to the additional condition that [the agreed-to] minimum instream flows over the Dam and Falls for the aesthetic values shall be further monitored and evaluated by Ecology during initial operation of the Project (within three years).”

After Ecology’s issuance of Section 401 Water Quality Certification, but prior to resolution of the appeal thereof, FERC, on July 9, 2013, issued a 50 year license to the District for the construction of the Enloe Project. Consistent with the analysis in FERC’s EA, the license generally included the enhancement and mitigation measures proposed by the District, as well as additional measures required by FERC. The extensive nature of these measures and related plans served as the premise for FERC granting the Enloe Project the maximum 50 year license term. A request for rehearing of the license has been filed by a group of nonprofit organizations challenging the aesthetic minimum flow requirements similar to the challenge raised in the appeal of the Section 401 Water Quality Certification. That rehearing is currently pending.

With the FERC license in hand - albeit subject to a pending rehearing, and the Section 401 Water Quality Certification in hand – albeit subject to potential appeal, the District is still faced with the task of obtaining a major authorization to occupy the federal lands, i.e. the right-of-way (ROW) authorization to be granted by the BLM under the Federal Land Policy and Management Act (FLPMA). That application for ROW was filed on April 8, 2010 and is still pending.

I will turn now to discuss in more detail these multiple licensing and approval processes, the role of natural resource agencies in these processes, and the challenges posed for a municipally owned utility like the District as it seeks certainty about the terms and conditions under which it will be authorized to proceed with development of a 9 MW renewable energy project.

FERC License

The District received its FERC license on July 9, 2013, approximately 8 years after initiating the licensing proceeding before FERC. Although the District greatly appreciates FERC's hard work, the thorough and professional job it did in preparing the required NEPA document (EA) and ultimately the issuance of the license for a 50 year term, this proceeding has taken far too long and consequently it has been far too expensive. Because of mandatory conditioning authority and the additional federally mandated approvals that are the functional equivalent of mandatory conditioning authority, FERC too often is forced to await natural resource agency action that it has no power to influence as to schedule or substance. FERC is largely deprived of the needed role of gate-keeper or arbiter of the often conflicting demands of resource agencies whose resource-focused mandate includes no consideration of economic implications that could undermine the feasibility of the proposed project.

Although fairly early in the licensing consultation process, the District reached consensus with most of the agencies, tribes and stakeholders on a package of protection, mitigation and enhancement (PM&E) measures more than adequately addressing the Enloe Project's foot-print, while still maintaining the economic feasibility of the Project. The key federal land management agency, BLM, pursued excessive and costly additional requirements with little or no relationship to Project impacts. BLM pursued this wish list of additional measures without regard to their potentially serious economic consequences for the Project. Although BLM failed to invoke any mandatory conditioning authority to require the imposition of these conditions in the license, it was clear that BLM retained the authority to nonetheless impose these requirements in the exercise of its independent authority under FLPMA for the issuance of a ROW. FERC rejected BLM's excessive conditions, but nonetheless left the District in the position of having to negotiate independently with BLM any further conditions that might be imposed on the Project. BLM's grant of that ROW is currently pending.

As I previously mentioned, the FERC license is currently the subject of a rehearing before FERC on the issue of the aesthetic flow that should be required of the Project. This is a sensitive issue because of the adverse economic implications of diverting further flows for purported aesthetic values in this remote Project location. In its assessment of the feasibility of proceeding with actual Project development, the District is anxiously awaiting the results of that rehearing process and whether any further appeal will follow. The certainty a license applicant reasonably expects upon finally reaching the issuance of the license order for a proposed project has proved to be elusive at best.

Section 401 Water Quality Certification

On February 25, 2010, the District applied to Ecology for certification for the Enloe Project under federally delegated authority pursuant to Section 401 of the Clean Water Act. Under the terms of the Clean Water Act, each applicant for a federal permit like a FERC license must obtain a Section 401 water quality certification. This process is conducted through federal authority delegated to each individual state in which the

project is based. Each state designs its own process and establishes its own water quality standards and related requirements. As such, each state has its own process, the scope of which varies radically from state to state. I am informed from industry professionals that the State of Washington has one of the most elaborate and demanding water quality certification processes in the nation.

The District's experience in applying for and conducting all the studies required to support this water quality certification revealed a process much more akin to replicating much of the FERC licensing process. The expenses and effort required to obtain such certification was substantial, requiring the completion of many expensive implementation plans and specifications that under normal circumstances would be completed only post-licensing after the decision to proceed with the Project. This process is not only inefficient and duplicative, but also is extremely expensive and time consuming.

On August 20, 2012, Ecology issued a final water quality certification which represented the consensus of the District and the key resource agencies with respect to PM&Es appropriate to water quality and protection of designated uses. Unfortunately, that certification decision was immediately appealed to Washington state's administrative body with jurisdiction over such appeals, the Pollution Control Hearings Board (PCHB), by a group of nonprofit organizations. This appeal has imposed significant additional expenses on the District and was only just recently decided by the PCHB. Since the decision on the appeal came after the issuance of a license, FERC must amend the license to include the additional requirements set forth in the appeal that will be required conditions in the license.

BLM Right-of-Way Proceeding

The District submitted its ROW application to BLM on April 8, 2010, well in advance of the issuance of the FERC license. Since the inception of the license proceeding, the District has engaged BLM in consultation regarding the PM&E measures proposed in the license application (which are based on extensive consultation with most federal and state resource agencies, as well as the additional measures recommended by FERC in the Final EA). As I previously mentioned, BLM initially proposed further onerous environmental recommendations in the FERC licensing process which, as later confirmed by FERC, were unnecessary and unjustified. These recommendations were targeted to accomplish BLM programs and objectives not directly related to project impacts, and would have increased total project cost by 20 percent. BLM also was proposing to require a separate NEPA process in processing the ROW application, culminating in a separate Final EA/EIS from the one created by FERC for the same project site. The prospect of this substantial additional expense for the District and the delay and uncertainty involved was unacceptable for the District. It would have represented the adoption of an unnecessary and unreasonable process by BLM under its independent authority under FLPMA.

With the urging of Members of the Washington Congressional Delegation, including Representative Hastings, BLM has reviewed its policies on hydropower

licensing and NEPA and has brought their positions more closely in line with other federal land management agencies. I am pleased to report that we appear to have reached a consensus that will provide for BLM's reasonable use of the FERC Final EA in preparation of the ROW. We have also made progress on procedures to monitor and address BLM's additional concerns that were not addressed in FERC's license in a manner completely satisfactory to BLM. On September 13, 2013, BLM forwarded to the District for signature a proposed ROW grant, which we are reviewing. Upon the District's signature and acceptance of the proposed grant, BLM will countersign and provide its decision reflecting BLM's approval. The District is pleased with this important step and hopeful that its consultations with BLM will provide for the conclusion of this process with conditions that are supportive of the continued feasibility of the Project, as well as appropriate measures addressing legitimate BLM concerns.

Enloe Project: A Low-Impact Renewable Energy Project

In my testimony before this Committee on June 27th of last year, I explained at considerable length the green renewable nature of the proposed redevelopment at the Enloe Dam. Located at an existing dam and reservoir and operating on a run-of-river basis with virtually no measurable effect on the hydrologic regime of the Similkameen River, the Enloe Project will be a model of green, carbon-free hydropower design and operation. The Enloe Project is located above Similkameen Falls, a barrier to anadromous fish passage, and above critical habitat designated by NOAA Fisheries. It incorporates a significant package of beneficial measures to enhance and protect downstream fish and will provide fisheries and aesthetic flows to protect aesthetic and instream values consistent with its Section 401 Water Quality Certification.

In addition, the Enloe Project has been developed consistent with the recent interest in adding hydropower development to existing dams. Currently, only 3 percent of the nation's 80,000 dams generate electricity.¹ A study by the Department of Energy, National Oak Ridge Laboratory estimated that approximately 12.6 GW of new, renewable power can be generated at existing dam sites.² The Project is a great example of new low impact hydropower that can be built at such existing dams, if the licensing requirements involving multiple federal and state processes do not prove to be too onerous and do not impose excessive financially infeasible requirements on project development.

Just last month, Congress passed the Hydropower Regulatory Efficiency Act (Act), which promotes the development of small hydropower and conduit projects and aims to shorten regulatory timeframes of certain other low-impact hydropower projects, such as adding power generation to the nation's existing non-powered dams and closed-loop pumped storage. Under the Act, a project such as the Enloe Project, which is an under-10 MW project at a non-powered dam, would be optimal for the expedited

¹ *National Hydropower Association*, <http://hydro.org/tech-and-policy/developing-hydro/powering-existing-dams/>.

² *National Hydropower Association*, <http://hydro.org/wp-content/uploads/2011/04/ORNL-Hydro-Factsheet-final.pdf>.

licensing process proposed to be investigated by FERC. We endorse this important endeavor that may indeed facilitate future development of badly-needed clean hydropower generation.

Notwithstanding the prospect of future improvements in FERC licensing and hopefully in the related federal or federally delegated approval processes, the District's pursuit of the development of the Enloe Project has proceeded under the fractured and often dysfunctional procedures and requirements under the Federal Power Act, the Federal Lands Policy Management Act, the Clean Water Act, the Endangered Species Act, and other related statutes. Recall that the Enloe Project completed the entire licensing process and was issued a FERC license in 1996, only to have the license rescinded in 2000 for failure to resolve one issue, fish passage. Having achieved a regional consensus on fish passage, the District reapplied in 2005. It is indeed ironic that this reapplication process – far from enjoying an expedited process – took eight and one-half years! Nonetheless, we are part way to our goal of securing a balanced and clear authorization for the development of an economically feasible and environmentally beneficial project. We will persist in this endeavor, but I am here today to state plainly, but unequivocally, ***"It should not be this hard!"*** Anything Congress or the Administration can do to restore reason and balance to the processes regulating and constraining the development of beneficial renewable projects like the District's Enloe Project should be a matter of the highest priority.

In deference to this hearing's focus on existing as well as future investment in hydropower, I would like to emphasize that the District and its neighboring communities in our region highly value the many benefits hydroelectric development has delivered over the years. The continued operation of the federal hydroelectric system on the Columbia and Snake River dams is critical to our continued prosperity. We vigorously oppose any initiatives to retire, reduce or remove any part of this system. The Supplemental Biological Opinion released September 9, 2013 by NOAA Fisheries responsibly does not propose breaching any dams in order to protect fish. Responsible management of the hydroelectric system and the involved fisheries can produce mutually beneficial results, providing clean renewable hydropower and supporting healthy viable fisheries. Although by comparison it is only a very small incremental contribution, with the development of the Enloe Project the District aspires to join as yet a further extension of this existing beneficial use of our region's waterways.

I thank you for the opportunity to testify before this Committee today. I would be pleased to answer any questions.