

Relicensing the Skagit Project: The City of Seattle's Approach

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The city of Seattle is the owner of and licensee for the Skagit River Hydroelectric Project in northwestern Washington state. The Skagit Project includes three dams and the associated project area and facilities, and provides a maximum generating capacity of 784 megawatts—approximately 25% of the city's electric power requirements—as well as recreational and flood-control benefits. The project is situated within the Ross Lake National Recreation Area, a unit of the U.S. national park system.

In 1991 the city, federal and state agencies, tribes, and an environmental group reached agreement on relicensing the project and measures to mitigate its impacts while enhancing the environment and other values of the area.

DEVELOPMENT ON TRADITIONAL THEMES

The North Cascades area is heir to several great traditions. Centuries ago, the Pacific Northwest was home to the Native peoples who fished the rivers, hunted the game, and lived in close association with their surroundings and traditions. Then Europeans arrived; soon, the newcomers fulfilled their "Manifest Destiny" to tame the land. They wrested the riches of an uncooperative and turbulent environment and turned them to the betterment of the human condition. The lands and streams gave in their bounty, the forests were logged, the railroads built, and the rivers contained and dammed. After a time a reaction began to build in opposition to excesses of development, an awakening of a sense of partnership of humans with the environment, of a need to conserve the resources and values of the area.

The North Cascades, and the mighty Skagit River which flowed from them, have from the start drawn the attention of many people. Mining and agriculture first brought settlers into the interior. In the early years of this century, technology had advanced to the point where the interior forests could be entered to provide a great supply of logs and lumber, and the flow of the Skagit harnessed to provide vast amounts of power for the new genie, electricity.

The city of Seattle won the race to develop the hydropower potential of the upper Skagit, and in 1918 began construction on what was to become a project of three major dams. In 1927 a 50-year license was obtained under the new Federal Power Act for the development of one portion of the project, and later the whole of the project came under this license. In succeeding years various additions were made to the project, raising the heights of dams, enlarging reservoirs, increasing the amount and efficiency of electric power generation. The Skagit Project was a formative event in the development of public power in the West, and its development attracted national attention.

Over time the importance of preserving the great scenic beauty and natural bounty for the enjoyment of all and future generations also came to be seen as an essential goal.

But early efforts to designate a national park in the North Cascades did not succeed. The promise of the first years was lost in the doldrums of the middle years of the 20th century until it burst forth with renewed vigor in the 1950s. The North Cascades Conservation Council (N3C) was formed to champion the cause, and in 1968 achieved its goal when the North Cascades Park Act was passed. Under this act the dams and reservoirs of the Skagit Project were placed within the Ross Lake Na-

tional Recreation Area which, together with the two units of the North Cascades National Park and the Lake Chelan National Recreation Area, formed the North Cascades National Park Service Complex.

After many years of being displaced and deprived of their inheritance by more recent arrivals, Native Americans asserted and won recognition for their reserved treaty rights to fishing and hunting. With this began a new era of respect for the interests and rights of Native Americans, and participation of the tribes in the major resource issues.

CONTROVERSIES OVER HIGH ROSS AND COPPER CREEK

In the 1970s the city was proceeding with the latest stages in the continuing development of the Skagit Project. From the earliest days the Skagit Project had been designed with Ross Lake (the reservoir behind Ross Dam) as the main storage reservoir. Ross Dam was to be built in four stages to its final elevation. The final stage came to be known as the High Ross project. Down river, a fourth dam was planned near the confluence of Copper Creek. This dam would provide re-regulating capability, and the ability to obtain greater peaking power from the whole hydroelectric project.

These two projects came to be the great environmental issues of the day, and harbingers of things to come. Copper Creek, unlike the upper projects, was located in the highly productive salmon-spawning sections of the Skagit River, an area that was also heavily used by wintering bald eagles. Fresh from victory in the assertion of reserved treaty rights for fishing, the Skagit tribes saw the Copper Creek Project as a major threat to much of the very resource for which they'd fought. Conservation groups and agencies allied themselves with the tribes, and convinced the Seattle City Council

to place the Copper Creek Project in abeyance, where it remains to this day.

High Ross would have raised the level of Ross Lake over 100 feet, flooded six additional miles of the Skagit River valley in Canada, and drowned the Big Beaver valley in the U.S. Led by the N3C, a coalition of U.S. and Canadian groups fought the project. The groups were unsuccessful before the U.S. Federal Power Commission, which decided in favor of constructing High Ross. In other forums, the old agreement with Canada that allowed flooding of the Canadian lands was also upheld. However, by their efforts the groups had built a great amount of publicity and interest for the issue, and Seattle continued to pursue a settlement. In 1984 a treaty was signed between the U.S. and Canada in which Canada provided power equivalent to the amount and cost of power from High Ross in return for the city not building it.

THE INTERIM RELICENSING AGREEMENT

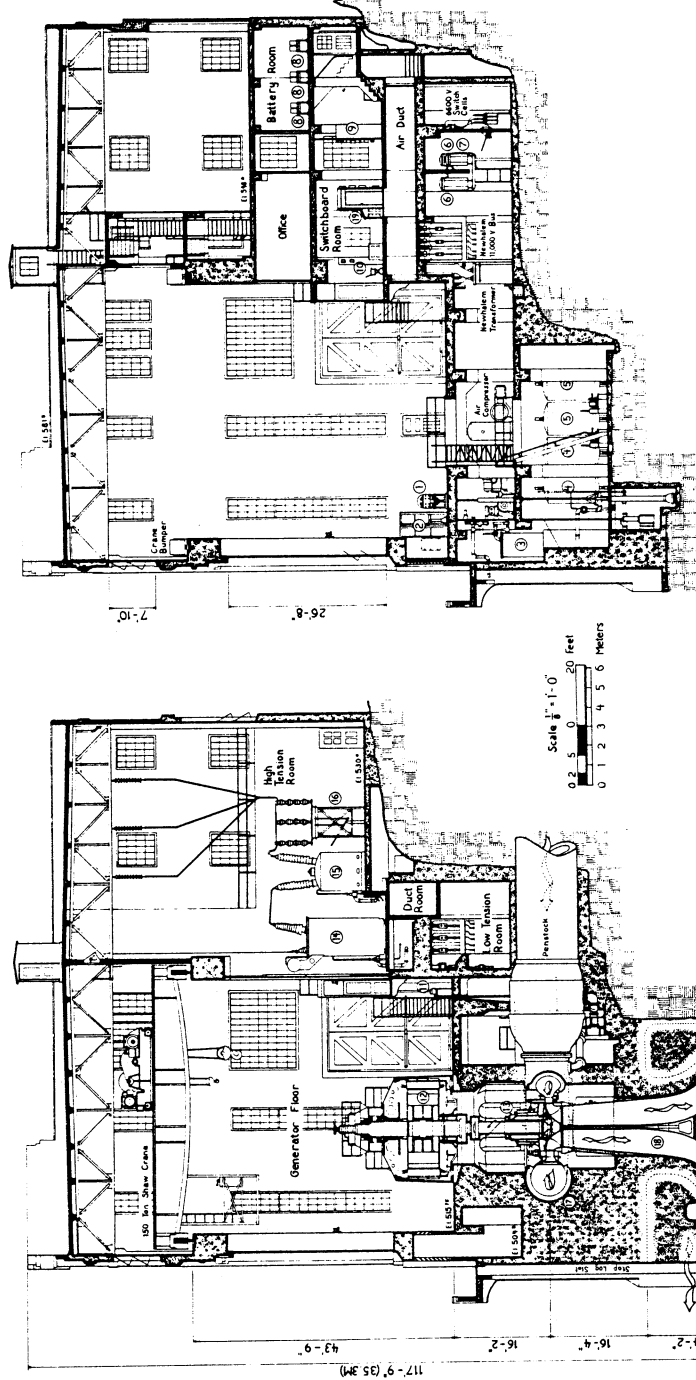
In 1977 the city of Seattle began the process of relicensing its Skagit River Hydroelectric Project. Under the Federal Power Act, most non-federal power dams are licensed for terms ranging up to 50 years, at which time a new license has to be obtained. As one of the first major hydroelectric projects to be licensed (in 1927) under the act, the Skagit Project became one of the first to enter relicensing.

No one really knew what to expect from this relicensing process. The Federal Power Commission (later to be reorganized as the Federal Energy Regulatory Commission, or FERC) saw its role as one of promoting development of the rivers, and had rejected only one project on environmental grounds in its 57-year history. The Seattle City Light Department ("City Light" for short)

saw its mission as one of providing power to its ratepayer-owners at the lowest cost. It had always succeeded in its applications to develop and extend the Skagit Project and other projects, and entered the relicensing foreseeing no major obstacles. The agencies, tribes, and conservation groups had participated in the recent enactment of the National Environmental Policy Act, Clean Water Act, and other new environmental laws, and saw the relicensing as a chance to redress the unmitigated impacts of the Skagit Project, but without any history before the Federal Power Commission to support this expectation.

The first clash between the parties came in 1979, when the city's application for relicensing was accepted by the Federal Power Commission. The several federal and state agencies and tribes filed motions asserting the lack of mitigation for major fisheries impacts of the project, and the state of Washington took great exception to the application's lack of consideration and measures for wildlife. In 1981 the city, agencies, and tribes agreed that important information was lacking regarding the fisheries issues, and entered into an interim agreement. Under this agreement operations would be modified and studies done to assess the impacts of the project on fisheries. Other issues, including wildlife and recreational concerns, were not addressed in the interim agreement. As the fisheries studies grew in length and scope, these unresolved issues fell out of discussion and lay dormant and unnoticed.

In the mid-1980s the city foresaw the coming conclusion of the fisheries studies, and began to prepare for the resumption of the relicensing proceedings.



SECTION A-A
GORGE POWERHOUSE
SKAGIT POWER DEVELOPMENT

- ① 20 HP Centrifuge Pump
- ② Sump Valve
- ③ Governor Oil Sump Tank
- ④ No. 1 Lubricating Oil Tank
- ⑤ No. 2 Transformer Oil Tank
- ⑥ 75 KVA Transformer
- ⑦ 37½ KVA Transformer
- ⑧ Storage Battery
- ⑨ Auxiliary Switchboard
- ⑩ Water Gauge Board
- ⑪ Johnson Valve Control
- ⑫ W Westinghouse Generator
- ⑬ S Morgan Smith Turbine
- ⑭ 138 KV Transformer
- ⑮ Circuit Breaker
- ⑯ Disconnecting Switch
- ⑰ Scroll Case
- ⑱ Draft Tube
- ⑲ Control Desk

Note:
This drawing based on Seattle
City Light Cross Sections of
Powerhouse, Dwg No C-265,
July 15, 1924, Generator - General
Assembly Elevation, Dwg No
243433, no date, Turbina Section,
Dwg No 2076-H, Sept 5, 1922;
7th Scroll Case, Dwg No 005-DJ,
July 26, 1921, Turbine Section,
Dwg No 2076-AH, May 8, 1923

SECTION B-B

Figure 1. Transverse Section, Gorge Powerhouse, Skagit Hydroelectric Project

NEW PERSPECTIVES FOR CITY LIGHT

In the period from 1977 to the mid-1980s some important events occurred in the city and region. A lack of planning and the business-as-usual attitude of the Northwest's publicly owned electric utilities led to a nuclear power fiasco for the Washington Public Power Supply System (WPPSS, pronounced "whoops"). In reaction to this and other concerns, a broad consensus came together on new directions for Seattle and Seattle City Light, and produced the *Energy 1990 Report*. On the basis of this report, and in recognition of the major controversies in which City Light and the city were embroiled, Seattle opted not to participate in the second set of WPPSS nuclear power projects, decided against pursuing the Copper Creek project, and developed a new mission statement for City Light. This statement identified three prime responsibilities for City Light: electric service reliability, maintenance of low rates and financial accountability, and environmental protection.

Another major change was the passage of the Pacific Northwest Electric Power Planning and Conservation Act, which brought a new era of energy planning to the Northwest. Though it had few direct consequences for the Skagit, it confirmed the growing public interest and pressure for energy conservation and environmental protection in electric power planning. Furthermore, progress had been made by the agencies and public groups in enacting environmental protections, and the FERC was coming under attack from various quarters. The regulatory, legal, and public climates had changed considerably since 1977.

Recognizing its clarified and broadened mandate, understanding the new circumstances it was facing,

and realizing the damage that the city and utility had sustained from the public controversies led City Light to some major adjustments in its approach to relicensing. The outstanding issues in the relicensing were all seen to be environmental, and the Environmental Affairs Division, together with the Power Supply and Planning Division, were identified as the lead divisions. Perhaps most importantly, the concept of a negotiated settlement was identified and approved as one of the principal goals for the relicensing.

GOALS AND OBJECTIVES FOR THE CITY

Seattle never formally adopted a set of goals or objectives, so the following list has the benefit of the omniscience of hindsight. Nonetheless, prime goals of the city for the relicensing included:

- ◆ relicense the Skagit Project;
- ◆ maintain operational flexibility;
- ◆ address the problems and impacts of the project;
- ◆ negotiate as good a monetary deal for the city as possible given the first three goals; and
- ◆ improve relations with all of the parties to the relicensing proceedings.

The first goal is self-evident, for the Skagit Project is an essential component of the city's electric power supply. The second is familiar to managers everywhere, and involves the ability to meet assignments given the practicalities of the real world, as well as the organizational desire to maintain options and control. The third is a necessity not only to meet regulatory requirements, but also for the city to be a good environmental citizen and for City Light to meet its environmental protection mission. The fourth recognizes that, among other things, maintaining operational flexibility

can be worth some additional monetary costs. The fifth goal both facilitates the first four goals, and aims towards building trust and good will to carry out the agreement and assist in future interactions.

To accomplish these goals, a number of objectives were developed. These included:

- 1) Develop a negotiations process that fully involves all of the parties. This meant recognizing the right of the N3C and other parties to be there, and according them full respect as parties in the process. While this seems a procedural tautology, there was considerable resentment and suspicion among various parties (not only between the city and other parties) regarding motives, agendas, secret deals, and the like. The establishment of an open process and the development of trust was an early and essential objective.
- 2) Identify and address all of the issues. This again seems to be a given, but the environmental review process did not emerge fully formed but evolved over time. Also, the hydropower licensing process had never been sympathetic to addressing environmental concerns, and there was always the temptation among developers to minimally address issues with the expectation that the FERC would uphold them. The city entered the negotiations with the interest of identifying all of the issues and then addressing them as best it could. In some areas this included considerable effort towards scoping and the development of information.
- 3) Solicit ideas and suggestions from all parties, and meet their needs for information. In order to participate effectively, the parties need to be supplied with in-

formation in a number of areas. The city made this information available, and worked together with the parties to interpret it and explore possible responses. In some areas the other parties were very forthcoming with ideas, in others the interaction was more of a review of and selection from measures and alternatives that had been proposed by the city.

- 4) Devise measures and programs that meet the needs of the resource, and that form a comprehensive and workable whole product. It is too often the case that planning for a given resource (fisheries, wildlife, recreation, etc.) fails to consider effects on and by other resources, and without consideration of long-term trends (such as local land use and development trends). It was the determination of the City Light staff that a final settlement should be comprehensive and make overall environmental, management, and economic sense. The programs and measures should meet the needs of the resources.
- 5) Coordinate with responsible City Light managers, staff and crews in the development of measures that affect them. This not only helped the negotiators develop more workable measures, it also helped institutionalize the measures by creating a sense of ownership among the utility staff.
- 6) Approach the negotiations with the attitude that a negotiated settlement is achievable and the preferred course of action. The positive attitude helped the negotiations weather some rough moments, and facilitated development of ideas and approaches.
- 7) Insist on a comprehensive package. Not only did measures and

programs have to fit together, but the deal itself was contingent on settlement in all areas: there would be no piecemealing of issues or parties, no partial settlement on some issues and submittal to the FERC on others. Secondly, the deal had to include all parties. Interestingly, both sides insisted on these conditions, and both felt the constraint at times.

The city did many studies during the information-gathering process. The other parties contributed significantly to the study objectives, and in several cases to the study designs and data-gathering as well. In the course of this work the Skagit became one of the best-understood rivers in the state. The wildlife and recreation analyses brought together scattered, disparate, and unanalyzed data of the past, and developed new information. Archaeological investigations identified a major new cultural resource that has already had implications for our understanding of the use of the landscape by prehistoric peoples.

The data collection and interpretation contributed significantly to the ability of all parties to make reasoned evaluations and resource decisions. The city's proposals, and those of the other parties, made better environmental sense as well as better meeting organizational goals. The results of the studies also made important contributions to the professional literature.

NEGOTIATIONS

Negotiations were conducted in each of the major resource areas, including fisheries, wildlife, erosion control, recreation and visual quality, archaeology and historic resources, and traditional cultural values. Most forums met periodically. While the city often used consultants to gather and develop information,

the city developed its own policies and positions, and conducted its own negotiations.

All participants in these negotiations had the authority to represent and negotiate for their respective parties, with all parties reserving the right of upper leadership or management to approve final agreements. A separate policy committee was formed to bring together organizational leadership as necessary. All parties withheld the participation of legal staff until technical and operations staff had developed satisfactory measures and programs.

Each of the parties approached the negotiations seriously; that is, a result was expected and would be seriously sought. The city implemented the procedural objectives described above. Base information was developed and considered by the parties, problems were identified, and problems and resources were jointly prioritized.

In the fisheries forum the discussion was centered on technical matters. For most parties this was the prime issue. In the recreational area the city developed a number of recreational use statistics and data, and discussion was directed towards the design of the studies and the use of the results to develop recreational projects. The wildlife resource had sustained some of the largest, and unmitigated, impacts from the years of development, and was of prime interest to several parties. In this forum were some of the most interesting conceptual questions: crucial to a settlement was the development of a comprehensive view of habitat trends in the Skagit and adjoining river basins, and the development by the parties of common objectives. For archaeological and historic resources, the field information provided primary direction for development of measures.

Once agreement was reached in principle in the several issue areas, a

preliminary agreement was drawn up to outline the overall understanding of the parties. While this was agreed to have no legal force (no one would be allowed to submit it to FERC), it played a critical role of establishing the outlines of the settlement. It established that a settlement could and would be arrived at, and helped correct selective memories of all parties during the final negotiations.

Lengthy negotiations ensued in the presence of legal staff to ensure that the language properly implemented the understandings and responsibilities that technical and policy representatives had agreed upon. Towards the end of the process a submittal deadline from the FERC helped expedite the conclusion of the negotiations.

BENEFITS OF A NEGOTIATED SETTLEMENT

There are some very real benefits that the city and other parties received from a negotiated settlement. The first is that by achieving a settlement the city and the other parties avoided a disputed proceeding before FERC. For a variety of reasons a disputed proceeding was seen as undesirable by all parties. From the city's perspective, FERC was still mostly supportive of the development side of licensing, although less so than it had been in the past. However, FERC was becoming a regular target for sharp scrutiny and criticism from the Congress and public, had had strong new environmental mandates imposed in statute by Congress, and its decisions and interpretations were being routinely rejected by the courts. FERC had its own agenda, which could conceivably include sacrificing the city's interests to further its own. The other parties could count on a largely unsympathetic hearing at FERC, but a probable improvement of their chances in the courts.

By negotiating a settlement the city and the other parties could make use of their superior knowledge of the area, its resources, and the hydroelectric system to craft measures that would better suit the needs of the resources and the parties than would anything that FERC or the courts could develop. Trade-offs could be assessed and decided by the people and agencies that knew the most about them and would have to live with them. Programs and measures developed by the parties would likely be more efficient in cost and performance.

A negotiated settlement would remove a great amount of uncertainty for all parties. For the other parties, the environmental program components would become known years earlier than in a disputed proceeding. The city could incorporate operational constraints and costs into its planning much earlier. In general, the relicensing would likely be concluded years earlier than in a disputed proceeding.

A negotiated settlement would serve the public relations interests of all parties, and the trust and good will would yield additional benefits in future interactions. The parties would save great amounts of time and money by not arguing before FERC and the courts.

By negotiating a settlement all parties could satisfy most needs and do well in at least some key areas. The alternative was a result that would rankle everyone and satisfy no one. There was a very real chance that a disputed settlement would cost everyone more and yield them less than would a negotiated settlement.

THE SETTLEMENT

The results of the settlement are too numerous and lengthy to describe completely, but include:

- ◆ Operations and flow requirements that provide a very high level of protection for anadromous fish populations;
- ◆ Acquiring at least 4,000 acres of threatened lands for wildlife habitat protection;
- ◆ Constructing, maintaining, and renovating trails, campgrounds, and boat launches;
- ◆ Developing and endowing an environmental learning center, and development of scientific research center;
- ◆ Protecting archaeological sites and the National Register properties of the project area;
- ◆ Providing funds to the tribes to develop tribal cultural centers; and
- ◆ Mitigating erosion problems along Ross Lake and other project reservoirs.

The negotiated settlement is seen by all parties as a satisfactory product. But can anyone be said to have "won" the negotiations? In a real sense all of the parties to a successful negotiated settlement are win-

ners, for they have had major goals accomplished and have found the tradeoffs to be acceptable. This is true for the Skagit Project relicensing, where all of the parties secured their major goals. For the city, it can be seen that the major goals identified above were all realized, and at a cost the city found to be acceptable.

The settlement provides benefits beyond this one hydropower proceeding, for it is an unequivocal example that a major environmental proceeding—replete with agencies, tribes, environmental groups, and many controversial issues—can be negotiated to a mutually agreeable and beneficial conclusion. And finally, the subject of concern, the environment, will be better protected and will receive better attention in the coming years. In this case, as the Seattle *Post-Intelligencer* stated in a lead editorial, "cooperation has led to a new ethic of environmental stewardship" that will become, "as it should, a fundamental part of the daily operation of City Light's Skagit hydropower program."