



**PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY**

P.O. Box 1231, Wenatchee, WA 98807-1231 • 327 N. Wenatchee Ave., Wenatchee, WA 98801  
(509) 663-8121 • Toll free 1-888-663-8121 • [www.chelanpud.org](http://www.chelanpud.org)

October 19, 2001

James Connaughton, Chair  
Council on Environmental Quality  
Executive Office of the President  
17<sup>th</sup> and G Streets, N.W.  
Washington, D.C. 20503  
Attention: Task Force

Re: Comments of Public Utility District No. 1  
of Chelan County to the Energy Task Force

Dear Chairman Connaughton:

**Introduction**

On May 18, the President issued Executive Order 131212, which established an interagency task force to ensure that federal agencies coordinate their efforts on permitting of energy projects. You have since requested specific suggestions regarding how permitting and other regulatory decision making processes may be improved or streamlined. The National Energy Policy Development Group observed in its White House report that regulatory uncertainty in the federal licensing process is "the most significant challenge confronting hydropower." The issue is worthy of attention as the Energy Task Force determines appropriate measures to expedite agency review of energy-related projects. Public Utility No. 1 of Chelan County ("Chelan" or "the District") appreciates the President's initiative and the opportunity to comment about the potential impacts of this important effort on our pending relicensing of the Rocky Reach hydroelectric project.

Chelan owns and operates three hydro projects in the State of Washington that together comprise the nation's second largest non-federal, publicly owned hydroelectric generating system. The projects have a combined total generating capacity of more than 2,000 megawatts of low-cost, renewable power and produce about 11 million megawatt hours of power annually, or enough electricity to meet the needs of a city with more than 900,000 people. Pacific Northwest customers depend on this stable and low-cost power supply, and the successful procurement of new licenses for the Lake Chelan Hydro Project (2004) and the Rocky Reach Hydro Project (2006) is among Chelan's highest priorities. Already the District has spent years

preparing for these federal deadlines. Aware that the traditional hydroelectric relicensing is notoriously adversarial and complex, Chelan has elected to undergo relicensing pursuant to the Federal Energy Regulatory Commission's alternative relicensing process (ALP), which is designed to reduce conflict while ensuring that environmental issues are addressed and decisions made at the local level. With regard to the 1,287 megawatt Rocky Reach Project, however, Chelan hopes to build on the ALP by pursuing an innovative proposal it has developed called the "outcome-based standards" approach.

### **Outcome-based Standards**

The outcome-based standards concept is simple: *give the regulated entity a specific environmental outcome to achieve and then allow it to achieve that outcome using whatever means it determines are most effective.* This straightforward approach is fairly revolutionary when compared to the current command and control regime that mandates compliance with specific operational tasks that may or may not ultimately produce the desired environmental results. The implications of this difference are significant, both in terms of increasing environmental benefits and in terms of reducing adversarial conflicts among stakeholders. Without outcome-based standards, a regulated entity might be in full compliance with regulatory requirements, but those regulatory requirements might result in little or no actual benefit to the environment. With outcome-based standards, the only standard is achievement of the result—a specific level of protection for the resource. In other words, the regulated entity is told what to achieve and not how to achieve it. Given more freedom, a concrete goal, and predetermined measures of success, a regulated entity benefits from certainty and the cost-effectiveness of its own innovation. At the same time, the environment and other protected resources benefit from more efficient and effective protection.

The concept need not alter any of the environmental regulations that might apply to hydroelectric projects, nor would it reduce the level of protection for the resources affected by hydro projects. Instead, outcome-based standards and Endangered Species Act ("ESA") agreements, or license articles incorporating those standards, would focus on *whether* and the *degree to which* the important resources are protected, rather than *how* those resources are protected. In other words, results are emphasized rather than the means, and the expected results are defined as measurable outcomes.

Chelan has a history of working productively with federal and state officials, the tribes and other stakeholders through its development of outcome-based standards for the proposed Anadromous Fish Agreement and Habitat Conservation Plan ("HCP"). The proposed HCP has received significant praise as a standard that goes well beyond ordinary efforts to comply with the ESA. This process under the ESA demonstrates that innovative ideas founded in outcome-based standards can be successful.

## **Chelan Proposal for Rocky Reach Relicensing**

Over the past year, Chelan has been working with the State of Washington to develop an agreement between the State and the District to utilize the outcome-based standards approach for the state component of hydroelectric relicensing. The State approved this approach in June of this year, and now Chelan hopes to pursue a similar agreement with the federal agencies involved in relicensing, including the Department of Commerce, the Department of Interior, and the Environmental Protection Agency. This approach has never before been applied to hydropower relicensing, and the District recognizes that it would be premature to ask for broad official endorsement of outcome-based standards as an option during relicensing. A pilot project conducted by the State, the appropriate federal resource agencies and Chelan, however, would be the ideal means to develop and refine this outcome-based concept. With both the state and federal agencies working with Chelan for positive results, this approach may well become a new and highly successful relicensing option for other hydroelectric projects.

The proposed pilot project would start with the appropriate agencies to initiate the process. Chelan would join state and federal officials to initiate and develop the outcome-based approach. Chelan would proceed with the ALP for Rocky Reach that FERC has already approved. Chelan would then work collaboratively with state staff, FERC, other agency staff as appropriate, and stakeholders to develop outcome-based standards for this resource and the means to measure results to verify success.

The goals of an outcome-based approach pilot project would:

- 1) Fully satisfy federal and state requirements for the protection of the environment, including water quality and fish and wildlife;
- 2) Provide for objective, measurable and achievable criteria by which it can be determined whether the standard is being met;
- 3) Provide a schedule or time frame when standards need to be achieved;
- 4) Provide a mechanism for dispute resolution if there is disagreement regarding interpretation of whether the criteria are being met;
- 5) Focus on the result or objective to be achieved, and not specify the measures to be used to achieve the result or objective;
- 6) Focus on the Project's actual ongoing effects;
- 7) Be consistent with other outcome-based standards developed through this process, if other such standards have been adopted; and
- 8) Provide a technical committee to review results of monitoring and evaluation criteria.

## **Potential Benefits**

The use of outcome-based standards would benefit the environment and the other resources affected by the project. They would also provide benefits for a facility owner, the state

and federal resource agencies, and other stakeholders. For Chelan PUD, the incentive to participate comes from the clear understanding of what is expected and the flexibility it would retain when choosing the means to achieve the outcome. Under outcome-based standards, the cost of compliance is likely to be lower because Chelan's better knowledge of the Rocky Reach Project can be used to more efficiently meet the needs of the protected resources. Lower compliance cost benefits the electricity consumers. The combination of lower costs, increased flexibility, and Chelan's desire for a comfort margin exceeding the standard should result in even greater protection for the resources of concern than the outcome-based standards require.

More generally, however, an outcome-based approach to the relicensing process would be the first step in creating a license or an ESA compliance approach that ties both rewards and penalties directly to the facility owner's success in protecting the resources of concern. The approach outlined in this proposal would create a role for stakeholders in developing appropriate outcome-based standards and would provide the resource agencies and other stakeholders with responsibility for monitoring, compliance review, and technical consultation once the license is issued. From Chelan's perspective, the outcome-based standards approach would set high standards and offer rewards for innovation. Under this proposal, the use of the approach would both save costs and increase environmental benefits. Finally, as a safety net, the proposal also offers "off-ramps" for agency participants in the event that the licensee is unable to meet the outcome-based standards it committed to achieve.

For the state and federal resource agencies and the other stakeholders, the incentive to participate comes from the likelihood that the licensee would be willing to accept higher standards of protection in return for the benefits derived from the flexibility to decide how to meet those standards. In addition, by developing the outcome-based standards through a collaborative process, the resource agencies and the interest groups avoid a protracted and costly formal relicensing proceeding. The use of outcome-based standards can also minimize potentially conflicting objectives between agencies. In addition, the Administration may be able to use outcome-based standards in order to reconcile agency objectives so that the State can speak with one voice during the relicensing. Outcome-based standards could become an integral tool should it become necessary to craft a settlement through alternative dispute resolution.

Outcome-based standards would also reduce the difficulty and delay associated with monitoring and compliance review. By using clear, accurate, and objective "measuring sticks" to gauge the owner's performance, the parties would be able to identify more quickly any outcome-based standards that had not been met, so that a remedy could be implemented promptly. Prompt and objective review could reduce the costs of monitoring and the possibility of further harming the protected resource through delay. Furthermore, the outcome-based approach would allow the owner to assess the costs and benefits of new technologies as they become available, and to implement them when they offer a better way to meet outcome-based standards.

### **Recommendations to the Task Force**

The comprehensive FERC relicensing process is a rigorous prospect for hydroelectric projects across the nation. Despite the hurdles, however, history has demonstrated that challenge often brings opportunity. The outcome-based standards approach represents a change in philosophy as well as a change in process, but the District believes that Rocky Reach is particularly suited to serve as a pilot project because of the current HCP and the existing agreement with the State. Executive Order 13212 could provide the opportunity of implementation of this innovative pilot program.

Chelan respectfully recommends that the Administration consider a federal agreement with the District to implement this proposal. The pilot project could be an important component of the agency-wide effort to facilitate permitting, reduce conflict among stakeholders, and improve the decision-making process – all without sacrificing the environmental priorities that Chelan shares with its customers. Much of the groundwork for this effort has already been laid, particularly with regard to the State's involvement. However, new approaches are often difficult to implement without clear direction from leaders within federal and state agencies. A commitment from high-level Administration officials is critical for the success of this initiative. The District will contact a Task Force representative to request a meeting in order to further detail this proposal and provide background material as appropriate. Please do not hesitate to contact Roger Purdom at (509) 663-8121 for further information on this ongoing effort.

Again, Chelan appreciates this opportunity to comment on Executive Order 13212 and its potential impacts on the District's pending project.

Sincerely,



Roger Purdom  
Assistant General Manager  
External Affairs

*Providing Clean, Renewable Hydroelectric Energy*



**PUBLIC UTILITY DISTRICT NO. 1  
OF CHELAN COUNTY**

P.O. BOX 1231

WENATCHEE WASHINGTON • 98807-1231

James Connaughton, Chair  
Council on Environmental Quality  
Executive Office of the President  
17<sup>th</sup> and G Streets, N.W.  
Washington, D.C. 20503