UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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HYDROPOWER DIVISION
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DOC/NOAA/NMFS
OFFICE OF WATER AND WATERSHEDS

February 15, 2013

Mr. Jim Luce, Council Chair
State of Washington, Energy Facility Site Evaluation Council
PO Box 43172
Olympia, Washington 98504-3172

Mr. Kelly Susewind, Water Quality Program Manager
State of Washington, Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Re: Columbia Generation Station National Pollutant Discharge Elimination System (NPDES) Permit Renewal

Dear Mr. Luce and Mr. Susewind:

I am writing regarding the re-issuance of NPDES Permit Number WA0025151 for the Columbia Generating Station, a nuclear power plant on the Hanford Reach of the Columbia River. [1] As you know, the authority to issue the permit rests with the Washington Energy Facility Site Evaluation Council (EFSEC), which has contracted with the Washington Department of Ecology (WDOE) to draft the permit. The EPA has oversight authority under Section 402(d)(2) of the Clean Water Act (CWA). National Marine Fisheries Service (NMFS) has expressed an interest in the permit, in accordance with the Endangered Species Act (ESA). The purpose of this letter is to initiate discussions among our agencies concerning appropriate conditions for this permit in view of the ESA and CWA requirements, and to set forth a few key factual and legal issues important to those discussions.

In letters from William Stelle, NMFS Regional Administrator, to the EPA and EFSEC, dated May 7, 2012, NMFS summarized its concerns about the effects of the facility's cooling water intake structure as follows:

> "Under the terms of the CWA, 33 U.S.C. § 1326(b), [CWA § 316(b),] the next NPDES permit for the Columbia Generating Station must, in addition to regulating effluent discharges, 'require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.' Id. see also, 40 C.F.R. § 125.90. In particular, in this case, it must provide for the adequate protection of ESA-listed salmonid species consistent with EPA and NMFS authorities under the CWA, §§ 303(c), 304(a) and 402, and ESA, §§ 7(a)(2) and 9, respectively."

[1] Current permit available at http://www.efsec.wa.gov/enw/ENW%20CGF%20NPDES%20Permit%205%2006.pdf.

NMFS expressed concerns that the plant's existing cooling water intake structure may be harming or killing young salmon by entraining or impinging young salmon, and indicated its desire to review the draft permit and, if warranted, use procedures set forth in the Memorandum of Agreement (MOA) between the EPA and NMFS[2] to help ensure that the permit avoids or minimizes detrimental effects to federally listed species.

EFSEC, Ecology, NMFS, and the EPA staff discussed what would be the appropriate design standards for the plant's cooling water intake structure in order to comply with CWA § 316(b) during a conference call on November 16, 2012. In 2011, NMFS re-issued its *Anadromous Salmonid Passage Facility Design*[3] guidelines that include design specifications for intake structures to minimize take of salmon species in the Pacific Northwest. On April 20, 2011, the EPA proposed new Section 316(b) implementing regulations establishing requirements for cooling water intake structures at existing facilities[4] and is scheduled to finalize the regulation by June 27, 2013. Concerns were raised during the conference call that there may be inconsistencies between NMFS' guidelines and the EPA's final regulations.

First, the EPA would like to clarify that until the new EPA regulations are final, NPDES permit requirements are to be based on best professional judgment (BPJ) on a case-by-case basis. As stated in the Federal Register Notice:

> "Notably, EPA by this action is not suspending 40 CFR 125.90(b). This retains the requirement that permitting authorities develop BPJ controls for existing facility cooling water intake structures that reflect the best technology available for minimizing adverse environmental impact. This provision directs permitting authorities to establish section 316(b) requirements on a BPJ basis for existing facilities not subject to categorical section 316(b) regulations."[5]

Under the current Section 316(b) regulations, the EPA believes NMFS' guidelines are important to consider in determining BPJ controls for minimizing adverse impacts to salmon and steelhead.

Second, the EPA does not view the NMFS' guidelines and the EPA's proposed regulations as inconsistent. Rather, NMFS' guidelines provide important criteria to minimize adverse impacts to Pacific Northwest salmonids that should be considered where the permit authority has discretion. For instance, the proposed regulations expressly call for the permitting authority to establish best technology available standards for entrainment mortality on a case-by-case basis after considering all relevant factors. NMFS' guidelines would certainly be a relevant factor in this case. Additionally, fully considering the NMFS' 2011 guidance in determining appropriate conditions in the re-issued NPDES permit would also help ensure that EFSEC as the permitting

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[2] Memorandum of Agreement, January 2001, http://water.epa.gov/scitech/swguidance/standards/esa.cfm

[3] Anadromous Salmonid Passage Facility Design, National Marine Fisheries Service, Northwest Region, July 2011. (http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf)

[4] Cooling Water Intake Structures - CWA §316(b), http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/index.cfm.

[5] Federal Register Notice (72FR37107-37109) July 9, 2007 (http://www.gpo.gov/fdsys/pkg/FR-2007-07-09/pdf/E7-13202.pdf)

authority, or Energy Northwest as the owner the Columbia River Generation Station, do not violate the ESA § 9 take prohibitions.

To help ensure the permit protects salmon and steelhead in the vicinity of nuclear power plant cooling water intake structure, and complies with CWA § 316(b), the EPA requests that EFSEC, Ecology, NMFS and the EPA have collaborative discussions and review a preliminary draft of the permit prior to issuance of the public draft. We recommend that the agencies meet soon to begin these discussions. If you have any questions or concerns about this letter, the EPA's oversight role for state-issued NPDES permits, or the EPA-NMFS MOA coordination procedures, please contact Karen Burgess at (206) 553-1344, John Palmer at (206) 553-6521, or myself at (206) 553-1855.

Sincerely,

Daniel D. Opalski
Office of Water and Watersheds

cc: Mr. William W. Stelle, Jr., Regional Administrator, NOAA-NMFS
Mr. Stephen Posner, EFSEC
Mr. Jim LaSpina, EFSEC
Mr. Bill Moore, Ecology
Mr. Vince McGowan, Ecology
Mr. Bryan Nordlund, NOAA-NMFS
Mr. Richard Domingue, NOAA-NMFS
Mr. David J. Wrona, Chief, Projects Branch 2, Division of License Renewal, NRC
Mr. Dale Atkinson , Energy Northwest