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**IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

SAUK-SUIATTLE INDIAN TRIBE, on its
own behalf and as representative of the
class of persons deceived by unfair or
deceptive trade acts or practices of
defendant,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

Case No. 21-2-12361-5 SEA

**COMPLAINT FOR
VIOLATIONS OF
CONSUMER PROTECTION ACT AND
FOR CERTIFICATION AS A CLASS
ACTION AND FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

RCW 19.86, et seq.

INTRODUCTION

Plaintiff, on its own behalf and on behalf of the class of plaintiffs similarly situated, having been harmed by Defendant Seattle’s unfair and deceptive practices associated with claims of superlative environmental responsibility, hereby alleges the following complaint for declaratory and injunctive relief, reserving the right to amend this complaint to assert damages as the evidence may warrant. The objective of this action is to ask that Defendant Seattle be ordered to desist from its relentless “greenwashing” of its Skagit Project and environmental performance, because it constitutes a deceptive trade practice pursuant to RCW 19.86.

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I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff Sauk-Suiattle Indian Tribe is a federally recognized Indian Tribe whose homeland is within the Skagit River Basin. Plaintiff is composed of tribal citizens who rely upon cultural and natural resources within the Skagit River ecosystem. Plaintiff has hunted and fished in the Skagit River Basin as the basis for its economy and culture for at least 8,000 years, *i.e.*, since Time Immemorial.

1.2 Defendant City of Seattle is a municipal corporation within the State of Washington. Defendant Seattle is the sole owner of and solely responsible for Seattle City Light, Defendant Seattle's electrical power utility. (Seattle and Seattle City Light are collectively referred to hereinafter "**Defendant Seattle**").

1.3 Jurisdiction and venue are proper before this Court based on the principal place of business of Defendant Seattle.

II. RELEVANT FACTS

2.1 Starting in or about 1917, Defendant Seattle constructed, and has operated at all times relevant since, three large hydroelectric dams on the mainstem of the Skagit River – Gorge, Diablo and Ross – which together have a production capacity of 711 megawatts (hereinafter, the "**Skagit Project**").

2.2 The Skagit Project blocks approximately 37% of the Skagit River to upstream and downstream fish passage. Defendant Seattle has installed no fish passage facilities whatsoever at the Skagit Project, in contrast to virtually every other hydroelectric operator in the Pacific Northwest.

2.3 Over the course of the last 100 years, the Skagit Project has blocked downstream nutrient and sediment transport as well as process flows, slowly starving the river downstream and its associated salmon habitat of life and vitality.

2.4 In planning and constructing the Skagit Project, Defendant Seattle failed to seek or obtain the permission of Plaintiff Sauk-Suiattle Indian Tribe or any of the other indigenous

1 peoples native to the Skagit River Basin, who have based their life, culture and livelihoods on
2 the resident and anadromous fish species therein since Time Immemorial.

3 **2.5** In 2003, Defendant Seattle sought certification of its Skagit Project from Low
4 Impact Hydropower Institute (“**LIHI**”), a 501(c)(3) nonprofit organization. LIHI is the principal
5 “green power” certifying agency in the United States, with its certification affording hydroelectric
6 operators immense economic and other benefits, including but not limited to the following:
7

- 8 - Near-exclusive hydropower eligibility for mandatory renewable markets throughout
9 the United States, inherently commanding higher energy prices than non-LIHI
10 certified electricity;
- 11 - Near-exclusive hydropower eligibility for the U.S. Environmental Protection
12 Agency’s (“**EPA**”) Green Energy Power Partnership, a principal access point to
13 voluntary renewable energy markets across the country, which affords higher
14 market prices than non-LIHI certified electricity;
- 15 - Near-exclusive hydropower eligibility for Green-e Energy,¹ described on the LIHI
16 website as “the nation’s leading independent certification and verification program
17 for renewable energy in the retail market,” which affords higher market prices than
18 non-LIHI certified electricity;²
- 19 - Qualification for purchasers of Skagit Project power to obtain Leadership in Energy
20 & Environmental Design (“**LEED**”) credits, thereby assisting with LEED certification
21 and inherently delivering higher value for the electricity sold;
- 22 - Significant public trust and confidence in the environmental values and ethos of the
23 hydroelectric operator receiving the LIHI certification, thereby creating a public
24 presumption of better-than-average performance in matters of the environment,
25 social responsibility and governance (hereinafter, “**ESG**”), in turn inherently leading
26 to lower regulatory and other public scrutiny, as well as market preference for the
27 Defendant’s products and services.

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30 ¹ See, <https://www.green-e.org/programs/climate/endorsed-programs> (last visited 9/6/2021).

31 ² See, <https://lowimpacthydro.org/green-markets-voluntary/#:~:text=LIHI%20supports%20voluntary%20green%20markets%20in%20cooperation%20with,their%20renewable%20energy%20certificates%20%28RECs%29%20through%20Green-e%20Energy> (last visited 9/16/2021).

1 **2.6.** In 2002, Defendant LIHI published a “report [that] provides the first
2 comprehensive description of the Low Impact Certification Program.”³ The 2002 Report
3 describes LIHI’s “Green Power” certification program as follows:
4

5 Consumers in the United States increasingly have the option to
6 choose “green” power sources of electricity—energy produced from
7 renewable sources such as wind, water, and the sun, with fewer
8 environmental impacts than traditional fossil fueled generation. With
9 choice, however, consumers have questions about the
10 environmental qualities of the generation sources they are
11 supporting, especially hydropower. While hydropower generation
12 does not require the burning of fossil fuels, hydropower dams can
13 cause significant environmental harm. Because of this, consumers,
14 power marketers, and other green power stakeholders need some
15 means of ensuring that the hydropower they select comes from an
16 environmentally acceptable facility.

17 The Low Impact Hydropower Institute (LIHI) aims to meet that need
18 through its Low Impact Hydropower Certification program, a
19 voluntary, impact-based certification system for hydropower facilities
20 based on objective standards in eight criteria areas...

21 The purpose of the program is to help reduce the impacts of
22 hydropower generation by providing consumers with a credible and
23 accepted standard for evaluating hydropower.⁴

24 **2.7** As set forth by LIHI’s current certification handbook, there are eight criteria and
25 supporting goal statements, ***all of which must be met for a facility to qualify as a Low Impact***
26 ***Certified hydroelectric facility.***

- 27 a. Ecological flow regimes
- 28 b. Water quality protection
- 29 c. **Upstream fish passage**
- 30 d. **Downstream fish passage and protection**

31 ³ “Certifying Hydropower for “Green” Energy Markets: The Development, Implementation, and Future
32 of the Low Impact Hydropower Certification Program,” by Lydia Grimm, Low Impact Hydropower
Institute, 2002, at 1, <https://lowimpacthydro.org/wp-content/uploads/2020/07/Lydia-Grimm-on-LIHI-formation-2002.pdf> (last viewed on 9/16/2021).

⁴ *Id.* at 1

- e. Watershed and shoreline protection
- f. Threatened and Endangered Species Protection
- g. Cultural and Historic Resource Protection
- h. Recreational Resources⁵

2.8 The aforementioned LIHI Certification Handbook states that Upstream Fish Passage and Downstream Fish Passage – LIHI Criteria C and D – are “intended to ensure that migratory species can successfully complete their life cycles and maintain healthy populations in areas affected by the facility.”⁶

2.9 The LIHI Certification Handbook affords an exemption from the requirement to provide upstream and downstream fish passage *when the hydroelectric facility has no present or historical impact on anadromous species*, as discussed in LIHI Alternative Standards C-1 and D-1, excusing the lack of fish passage when:

[t]he facility does not create a barrier to upstream passage, or there are no migratory fish in the vicinity of the facility. If migratory fish were present historically, the facility did not contribute to the extirpation of such species.⁷

[t]he facility does not create a barrier to downstream passage, or there are no migratory fish in the vicinity of the facility. If migratory fish were present historically, the facility did not contribute to the extirpation of such species; the facility does not contribute adversely to riverine fish populations or their access necessary for the completion of their life cycles.⁸

⁵ Bolding and underline added for emphasis.

⁶ LIHI 2nd Edition Handbook, Rv. 2.04, Section 3.2.3 and 3.2.4, available at <https://lowimpacthydro.org/wp-content/uploads/2020/07/2nd-Edition-Handbook-Rev.-2.04-2020-04-01.pdf> (last visited 9/15/2021).

⁷ *Id.*, LIHI Alternative Standards C-1 and D-1.

⁸ *Id.* While LIHI’s certification criteria have been modified slightly over time through revisions, the foregoing is an accurate description of LIHI certification criteria since the organization’s inception.

1 **2.10** Defendant’s initial application for LIHI Low Impact certification in 2003 was
2 reviewed by an independent scientific reviewing firm, Stillwater Sciences,⁹ which, on
3 information and belief, concluded that Defendant was ineligible for LIHI Low Impact certification
4 because Defendant Seattle’s Skagit Project failed LIHI’s applicable exemption from fish
5 passage.¹⁰

6
7 **2.11** The independent scientific reviewer’s disapproval recommendation was overruled
8 by LIHI’s then-Executive Director, Lydia Grimm, who dismissed the independent scientific
9 review:

10
11
12 In their draft report, Stillwater Sciences concludes that the Gorge
13 Facility does not meet the fish passage criteria and that such a result
14 is compelled by the plain language of C2.¹¹

15

16 I think it is an overly literal reading of the criteria.¹²

17 **2.12** The circumstances of LIHI Executive Director Grimm’s overruling of the
18 independent scientific reviewer’s recommendation give rise to additional concern about the
19 legitimacy of Defendant Seattle’s LIHI Low Impact certification. Stillwater Sciences, the
20 independent scientific reviewer, had only submitted a draft report to LIHI – but, because Ms.
21 Grimm was leaving LIHI in the near future for another job, she recommended approval of
22 Defendant Seattle’s LIHI Low Impact certification in response to the *draft* Stillwater Sciences
23 report:

24
25 I have reviewed the application, supporting materials, the additional
26 materials provided by the Applicant in response to the Application
27 Reviewer’s inquiry, and the draft report by Stillwater Sciences

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30 ⁹ www.stillwatersci.com (last visited 9/15/2021).

31 ¹⁰ LIHI Staff Report dated April 23, 2003 to LIHI Board of Governors, available at
<https://lowimpacthydro.org/lihi-certificate-5-skagit-project-washington/> (last visited 9/15/2021).

32 ¹¹ *Id.* at 1.

¹² *Id.* at 7.

1 (Application Reviewer). (The final report will not be available until
2 after I depart LIHI).¹³

3 **2.13** In overriding the independent scientific reviewer’s recommendation, LIHI
4 Executive Director Grimm relied principally on a 1988 report prepared by consulting firm
5 EnviroSphere, furnished to LIHI by Defendant Seattle.¹⁴ The EnviroSphere Report relies
6 principally on a selection of historical hearsay, carefully curated to bolster the “no impact”
7 outcome that Defendant Seattle sought in its long-standing effort to avoid the obligation to
8 construct fish passage facilities at its Skagit Project.
9

10 **2.14** Upon approval by LIHI, Defendant Seattle’ Skagit Project became the largest LIHI
11 Low Impact-certified hydroelectric project in the nation. On information and belief, Defendant
12 Seattle’s Skagit Project today remains the nation’s largest LIHI-certified hydroelectric project.
13

14 **2.15** Defendant Seattle’s LIHI Low Impact certification was recertified in 2017 on the
15 same grounds as the original 2003 certification, minimizing strenuous objection raised by the
16 Upper Skagit Indian Tribe in the intervening years over the fact that the Skagit Project lacked
17 appropriate upstream and downstream fish passage.¹⁵ The 2017 LIHI recertification principally
18 relied on the flawed 1988 EnviroSphere report. Furthermore, a principal fact witnesses
19 supporting LIHI’s 2017 finding of “low local impact” was Richard Brocksmith, who has since
20 2013 been the Executive Director of the Skagit Watershed Council, a non-profit organization
21 charged by Skagit local government and Skagit Treaty Tribes with salmon recovery in the Skagit
22 River Basin.¹⁶ In 2020, Brocksmith was appointed by Defendant Seattle to the Skagit
23 Environmental Endowment Commission, a group that also includes two members of Defendant
24 Seattle’s principal law firm in the ongoing FERC proceeding.¹⁷ In his reported statements to
25 LIHI, Mr. Brocksmith furnished entirely favorable information about Seattle City Light, its Skagit
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29 ¹³ *Id.* at 1.

30 ¹⁴ *Id.* at 6.

31 ¹⁵ LIHI Skagit Recertification Review Report 2017, available at <https://lowimpacthydro.org/lihi-certificate-5-skagit-project-washington/> (last visited 9/15/2021).

32 ¹⁶ www.skagitwatershed.org (last visited 9/16/2021).

¹⁷ See, <https://skagiteec.org/about/commissioners/> (last visited 9/16/2021).

1 Project, and its relationship to the Skagit community, ignoring the deep concerns expressed by
2 Upper Skagit Indian Tribe, *i.e.*, one of the principal Skagit Treaty Tribes on whose aboriginal
3 homelands the Skagit Project was built by Defendant Seattle without permission.
4

5 **2.16** In stark contrast to LIHI's conclusion that natural barriers prevented passage and
6 thus no fish passage is required, numerous federal and state resource agencies as well as
7 Skagit Treaty Tribes have made clear in formal, on-the-record filings to the Federal Energy
8 Regulatory Commission ("**FERC**") that (a) there is no "natural barrier" preventing fish passage;
9 and (b) fish passage is likely the best, surest and most reasonable way to mitigate for the Skagit
10 Project's impacts while actually recovering the fishery resource. In summary, the agencies'
11 and tribes' filings reflect the following:
12

- 13 • All three Skagit Project dams present a barrier to upstream and downstream fish
14 passage;
- 15 • Migratory fish in the vicinity of Defendant Seattle's Skagit Project are currently
16 blocked from upstream passage by the Project;
- 17 • The Skagit Project likely contributed to extirpation of migratory species that were
18 historically present;
- 19 • The Skagit Project impacts riverine fish populations or their access necessary for
20 the completion of their life cycles;
- 21 • The Skagit Project is adversely impacting Skagit anadromous species listed under
22 the U.S. Endangered Species Act;
- 23 • The Skagit Project's impacts on anadromous species are adversely impacting
24 Southern Resident Killer Whales listed under the U.S. Endangered Species Act;
- 25 • Fish passage in the upper Skagit basin, upstream of Defendant Seattle's dams, is
26 likely the best and fastest way to accomplish anadromous species recovery in the
27 Skagit River ecosystem;
- 28 • Anadromous access to the upper Skagit Basin is all the more important given the
29 onset of climate change.
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1 Specific federal and state agency filings demonstrating the foregoing are set forth at
2 length in the paragraphs that follow.

3
4 **2.17** The National Oceanic and Atmospheric Administration’s National Marine
5 Fisheries Service (“**NOAA Fisheries**”) flatly disagrees with Defendant Seattle’s claim that there
6 are natural barriers to fish passage downstream of Defendant Seattle’s dams, among other
7 things making clear that the 1988 EnviroSphere report (on which the Defendant Seattle’s LIIHI
8 Low Impact certification centrally rests) does **not** constitute best available science:
9

10
11 [Seattle City Light’s FERC filing] suggests that the Project has had
12 limited effects on upstream passage of anadromous fishes, including
13 ESA-listed salmonids (SCL 2020). SCL cites EnviroSphere (1989) as
14 the sole source for identifying fish passage barriers 0.6 and 1.3 miles
15 upstream of the powerhouse (i.e., within the bypass reach).
16 Numerous observations from state, federal, and tribal
17 representatives have documented multiple species and life history
18 stages of salmon and steelhead at the base of Gorge Dam,
19 suggesting that no such barrier exists (USIT 2020a; USIT 2020b).

20 Furthermore, EnviroSphere (1988) states that fish were discouraged
21 but not prevented from accessing historical habitat to Diablo Dam.
22 SCL has not cited actual data identifying historical fish passage
23 barriers within the Project area. Also, under the current license SCL
24 nearly de-waters the bypass reach where multiple species of salmon
25 and steelhead have been observed (SCL 2020). Current SCL
26 operations have had a detrimental effect on ESA-listed salmon and
27 steelhead by prohibiting migration, spawning, and rearing above
28 Gorge Dam and by dewatering the bypass reach where ESA-listed
29 salmon and steelhead have been observed rearing and migrating.¹⁸
30

31 **2.18** The U.S. Fish and Wildlife Service (“**USF&WS**”) also criticizes Defendant Seattle’s
32 contention that natural barriers block anadromous species (as opposed to Defendant Seattle’s
dams):

31 ¹⁸ NOAA Fisheries Comments on Pre-Application Document and Scoping Document 1 and Study
32 Requests dated October 22, 2020, at PDF page 20 (on file with FERC as Accession No. 20201022-
5094).

1 [Seattle City Light] did not address the fact that SCL has failed to
2 document a fish passage barrier in the Skagit River using best
3 available science; in fact, a 1915 survey of the Skagit River (USGS
4 1915) found no evidence of a passage barrier.¹⁹

5 **2.19** The Washington Department of Fish and Wildlife (“**WDFW**”) has made clear its
6 view that Defendant Seattle’s “natural barrier” theory is scientifically unsupportable, explaining
7 at length the case for upstream and downstream fish passage at the Skagit Project:
8

9 Additional reports cited within [Defendant Seattle’s FERC filing]
10 anecdotally describe limits of fish passage above Gorge, Diablo, or
11 Ross dams; however, no report concludes that there exists or existed
12 (other than the dams) an insurmountable barrier to fish passage. The
13 Smith and Anderson 1921 report acknowledged in [Defendant
14 Seattle’s FERC filing] noted that “no single fall or rapid observed
15 would form an insurmountable barrier to the upward migration of
16 salmon”. Although no salmon were noted in the survey upstream of
17 the City of Seattle Camp, in part due to the timing of Gorge
18 construction activities already occurring at the time of the survey, it
19 is noted that many of the streams had but “a few scattered fish and
20 these were being hunted down to furnish bait for trout fishing.” A state
21 of decline was already in occurrence at the time of the study.²⁰

22
23 Approximately 37% of the Skagit Basin exists above Gorge Dam.
24 Portions of this basin are documented with providing suitable habitat
25 accessible by Chinook salmon and steelhead with passage at the
26 dams. Snorkel surveys (Anaka 2009, 2010, and 2011) conducted in
27 36 kilometers of the Canadian Skagit River upstream of Ross
28 reservoir found presence and persistence of rainbow trout, which is
29 considered analogous to Chinook salmon and steelhead indicating
30 potential habitat. Other undocumented portions of the basin may also
31 provide suitable habitat expanding on the potential benefits of fish
32 passage. Additional study efforts ongoing and proposed will expand
on this assessment of suitable habitat. Providing access through fish
passage improvements to this habitat would increase species
productivity in the Skagit basin and provide resiliency to those

19 U.S. Fish and Wildlife Service Comments on Seattle’s Proposed Study Plan, March 2020, PDF p. 14
(on file with FERC as Accession No. 20210308-5128)

20 Washington Department of Fish and Wildlife Comments and Study Requests dated October 26,
2020, PDF pp. 63-64 (on file with FERC as Accession No. 20201026-5133).

1 species through expanded spawning and refuge habitat, supporting
2 multiple life stage development.²¹

3

4 The Skagit River Basin represents one of the most historically
5 productive watersheds in Puget Sound, and one of the few remaining
6 watersheds that currently supports large numbers of naturally
7 produced salmonids. The Skagit River Hydroelectric Project
8 obstructs upstream and downstream passage for several species of
9 interest thereby limiting the potential productivity of the basin and
10 excluding access to documented suitable habitat. Within the last
11 license period, there have been recent observations of salmonids
12 navigating upstream past Seattle City Light proposed limits of
13 historical natural passage to the base of Gorge dam.

14

15 As population trends for salmonids in Puget Sound continue to
16 decline, establishing access to productive habitat is crucial for
17 recovery efforts. In consideration of the potential benefit of providing
18 access to known habitats upstream of the Project and of the recent
19 observations of passage to the base of Gorge dam, we are
20 requesting the feasibility study of providing upstream and
21 downstream fish passage at the Skagit River Hydroelectric Project.²²

22 **2.20** As discussed by the National Park Service, federal agencies also believe that fish
23 passage is a clear pathway to anadromous species recovery in the Skagit Basin:

24 Access to tributary and headwater habitats above dams, including in
25 the Skagit River, are major strategies for the recovery of these
26 Endangered Species Act (ESA)-listed species under recovery plans
27 approved by National Marine Fisheries Service (NMFS) and the U.S.
28 Fish and Wildlife Service (USFWS) (NMFS 2006, Shared Strategy
29 2007, NMFS 2019a, USFWS 2015). Surveys of the tributaries that
30 flow into the Skagit River Hydroelectric Project have identified
31 significant amounts of suitable habitat for salmonids (Triton 2008,
32 Meridian 2014).²³

.....

Fish passage in the Pacific Northwest has advanced significantly in
the last few decades with installation of passage improvements in
waters including but not limited to the Columbia River, Snake River,
Willamette River, Lewis River and neighboring Baker River (tributary

²¹ *Id.* at PDF p.60.

²² *Id.* at PDF p.52.

²³ National Park Service Comments and Study Requests dated October 20, 2020, PDF p.30 (on file with FERC as Accession No. 20201023-5057).

1 to the Skagit River). The installation and operation of these upstream
2 and downstream passage improvements has led to a greater
3 understanding of the factors influencing passage design and
4 performance. Design and operation of upstream and downstream
5 passage is no longer a novel concept and passage assessments
6 conducted for other Pacific Northwest dams can inform the feasibility
7 of passage at the Skagit River Hydroelectric Project (NWPC 2016,
8 Kock et al. 2018, and Hansen et al. 2017, Avista, MT – Thompson
9 Falls, Bonner Dam removal, Elwha Dam removal). Bidirectional
10 passage at the Baker River Hydroelectric Project has resulted in
11 successful adult and juvenile upstream passage and downstream
12 juvenile passage of sockeye salmon and bull trout, and has proved
13 beneficial for other species such as coho, *O. mykiss*, and coastal
14 cutthroat trout demonstrating expanded benefits of passage for
15 native fishes. Removal of the Elwha River dams in the Olympics also
16 provides a framework for understanding the potential benefits of
17 providing access to additional habitat and allowing the full expression
18 of life history types in the Skagit watershed. The Elwha Dam
19 removals have resulted in all five Pacific salmon species, steelhead,
20 bull trout, and cutthroat trout (presumably coastal cutthroat)
21 successfully using miles of previously inaccessible habitat and
22 expressing dormant life history strategies (Duda et al 2008, Duda et
23 al. 2020, Quinn et al. 2017).²⁴

24 **2.21** USF&WS points out that Defendant Seattle's Skagit Project not only blocks
25 upstream and downstream fish passage, but plainly has a major impact on the entire Skagit
26 River downstream of the Skagit Project, impacts that Defendant Seattle has an obligation to
27 mitigate in the manner directed by federal agencies and tribes:
28

29 Because the headwaters are protected, the [Skagit] Project is the
30 only major interruption to process flows. Farther downstream, there
31 are legacy landscape activities that also impact process flows,
32 however, because the Project manipulates the largest volumes in the
Skagit basin, it has a proportionally greater effect on the
geomorphology of the basin. Besides the lack of natural flushing
flows to move gravels and altered flow processes, current
geomorphology is impacted. The evidence of Project-impacted flows
is clear in spring streamflow records at least as far downstream as
Concrete. USGS gage data at Concrete, which shows the combined

²⁴ *Id.* at PDF p.31.

1 effects of the Skagit and Baker Projects, documents changes in
2 spring floods with a 10% exceedance 13,000 cfs lower and 50%
3 exceedance 6,700 cfs lower than pre-Project conditions. (Figure 5).
4 The Skagit Dams also cut off sediment from approximately 37% of
5 the watershed to the Skagit Delta (Hood et al. 2016). Above Bacon
6 Creek, within the Ross Lake National Recreation Area (RLNRA), the
7 Project is solely responsible for altering the natural flow of sediment,
8 wood, and water on the river system. The USFWS does not agree
9 with SCL's assertion that the natural range of variation and other
10 human-caused watershed factors make it impossible to identify the
11 Project's impacts on the river ecosystem below Sauk River.²⁵

12
13 **2.22** As WDFW makes clear, anadromous species' access to the cooler headwaters
14 of the Skagit will become all the more important as climate change escalates:

15
16 Access to headwater stream reaches has become an even larger
17 imperative as reductions in stream flows and increases in summer
18 stream temperatures accelerate. "As temperatures warm, seasonal
19 transition from rainfall to snowfall begins later in the year, producing
20 higher flows in early winter and shrinking cumulative snowpack.
21 Spring/summer snowmelt is also expected to begin earlier in most
22 basins, causing earlier and smaller spring freshets with lower
23 minimum flows in late summer" (Beechie et al. 2006; Beechie et al.
24 2013, Crozier et al. 2019). The upper tributaries of the Skagit River
25 where instream temperatures and flows are expected to be more
26 stable with respect to shifting seasonal transitions and would provide
27 more resilient habitat. Fish passage at the Skagit River Hydroelectric
28 Project has the potential to protect and enhance the Chinook salmon
29 and steelhead fisheries, as well as fisheries for unlisted anadromous
30 species present in the Skagit River.²⁶

31
32 **2.23** NOAA Fisheries explains that the Skagit Project has an adverse impact on
33 endangered Southern Resident Killer Whales:

34
35 **The status of the [Southern Resident Killer Whale Discrete
36 Population Segment, or "SRKW DPS"] is adversely influenced
37 by the [Skagit] Project.** The SRKW DPS was listed as endangered

38 ²⁵ U.S. Fish and Wildlife Service Comments and Study Requests, PDF page 9, dated October 22, 2020
39 (on file with FERC as Accession No. 20201026-5067).

40 ²⁶ *Id.* at PDF p.55.

1 under the ESA in 2005. Currently, the SRKW DPS has declined to
2 near historically low levels. As of September 2020, population
3 abundance was 74 whales. The previously published historical
4 abundance of SRKW is 140 animals (NMFS 2008a). Recovery of the
5 SRKW DPS is dependent on adequate prey abundance. SRKW
6 have experienced widespread reductions in their primary prey,
7 Chinook salmon, throughout much of their range, primarily due to
8 freshwater and marine habitat degradation resulting from
9 anthropogenic land use modifications, such as agricultural, urban,
10 industrial, and hydropower development, resource extraction,
11 overharvesting, hatchery production, and other causes (NMFS
12 2016a). To prioritize SRKW recovery efforts, including habitat
13 restoration needed to increase the whales' prey base, NMFS and the
14 Washington Department of Fish and Wildlife (WDFW) developed a
15 report identifying Chinook salmon stocks of high importance to
16 SRKW along the West Coast (NMFS WCR and WDFW 2018). The
17 priority stock report was created using observations of Chinook
18 salmon populations found in scat and prey scale/tissue samples, and
19 by estimating the spatial and temporal overlap with Chinook salmon
20 populations ranging from Southeast Alaska (SEAK) to California
21 (CA). **The Skagit River is among the most important sources of
22 Chinook salmon needed for the recovery of Southern Resident
23 Killer Whales (NMFS 2016a).**²⁷

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2.24 WDFW states that Skagit Project fish passage is important because it will mitigate
for the impacts of Defendant Seattle's Skagit Project on endangered Southern Resident Killer
Whales:

Providing fish passage at the Skagit River Hydroelectric Project is
expected to build resiliency in the Chinook salmon population and
have a direct effect on the Southern Resident killer whale
population.²⁸

²⁷ NOAA Fisheries Comments on Pre-Application Document and Scoping Document 1 and Study
Requests dated October 22, 2020, at PDF p.18 (on file with FERC as Accession No. 20201022-5094).

²⁸ Washington Department of Fish and Wildlife Comments and Study Requests dated October 26,
2020, PDF pp.55-56 (on file with FERC as Accession No. 20201026-5133).

1 **2.25** In summary, the evidence makes clear that the Skagit Project currently fails to
2 meet LIHI's certification criteria related to upstream and downstream fish passage, and has
3 never met LIHI's certification criteria.

4
5 **2.26** Despite comprehensive evidence that no natural barriers preclude much-needed
6 fish passage – as well as clear federal, state and tribal positions that fish passage is the
7 environmentally preferable mitigation approach – Defendant Seattle has instead intentionally
8 created an adversarial FERC process that appears mostly oriented around various tactics to
9 stall, delay, obfuscate and escalate costs, among other things continuing to perpetuate the
10 same false “natural barrier” argument underpinning its improper LIHI Low Impact certification.
11 Agency filings reflect Defendant Seattle’s strategy within the FERC proceeding: a rear-guard,
12 trench warfare approach to the Federal Power Act process:
13

14
15 [Seattle City Light’s Revised Study Plan] includes an investigation of
16 potential barriers [in the Skagit Gorge]. *The [National Park Service]*
17 *does not understand the need for this investigation considering that*
18 *no fish passage barriers are present in the Skagit Gorge as defined*
19 *by the best available science (Rawhouser 2020, WDFW 2019)*
20 (iemphasis added).²⁹

21 **2.27** As another example of Defendant Seattle’s tactics, on August 4, 2021, Defendant
22 Seattle unilaterally announced a new study to consider potential removal of all three dams,
23 something that no stakeholder requested. Defendant Seattle made this announcement first to
24 the media, from whom Skagit stakeholders learned of the new study. Defendant Seattle is
25 generating enormous sums of money by virtue of its LIHI certification, the full extent of which
26 Defendant Seattle refuses to disclose in response to public records requests from local
27 government and others. Furthermore, the cost of removal of the entire Skagit Project would
28 likely exceed a regionally equitable investment in fish passage. As such, it seems apparent
29
30

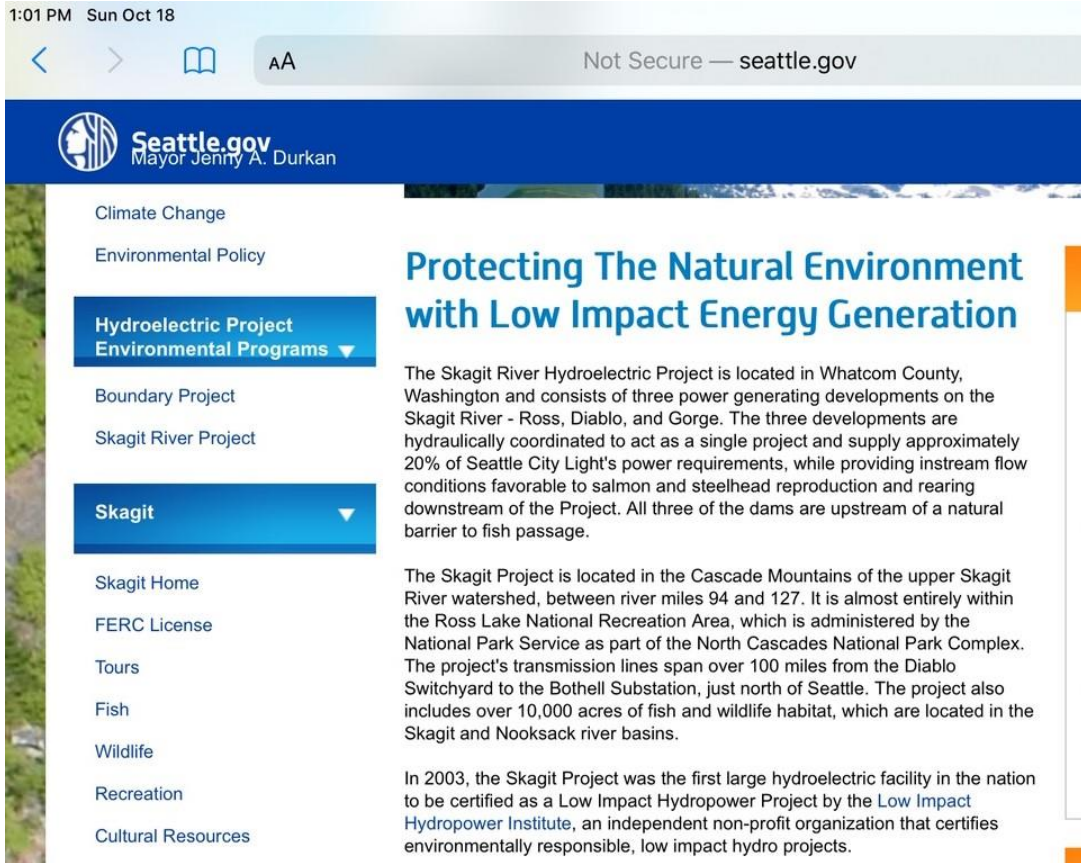
31
32 ²⁹ National Park Service Comments on Seattle City Light Revised Study Plan, dated May 5, 2021, at 12
(on file with FERC).

1 the Defendant Seattle has no true interest in removing the entire Skagit Project as an alternative
2 to fish passage, and Defendant Seattle's sudden, unilateral demand to study removal of the
3 entire Skagit Project has little apparent logical purpose other than to inject delay and escalate
4 cost to the fullest extent possible.
5

6 **2.28** Since its 2003 LIHI Low Impact certification, Defendant Seattle has publicly
7 communicated and advertised an extensive level of false and misleading environmental claims
8 regarding its Skagit Project, fish passage, and the LIHI Low Impact certification, information that
9 Defendant knew or should have reasonably known was deceptive and could create an
10 inaccurate understanding on the part of the public as to matters relevant herein.
11

12 **2.29** Moreover, Defendant Seattle began exaggerating the scientific basis of its LIHI
13 Low Impact certification. For example, on a website entitled "Protecting the Natural
14 Environment with Low Impact Energy Generation", Seattle made the claim that "*all three of the*
15 *[Skagit Project] dams are upstream of a natural barrier to fish passage,*" going on to claim, on
16 the same page, that Defendant's LIHI Low Impact certification "certifies environmentally
17 responsible, low impact hydro projects." Even the 2003 LIHI staff report never goes so far as
18 to definitively say that "all three dams are upstream of a natural barrier to fish passage,"
19 concluding only that the 1988 EnviroSphere report furnished by Defendant Seattle did not reflect
20 significant usage by anadromous species. A copy of the offending webpage is inserted below
21 for the Court's convenience:
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31 *[remainder of page left intentionally blank]*
32



2.30 As another blatant example of Defendant Seattle’s “greenwashing” of its environmental reputation, Defendant Seattle adopted as its brand and public slogan the bald assertion that Defendant Seattle is, allegedly, the “Nation’s Greenest Utility,” prominently displaying logos and claims to that effect on countless websites, materials, and presentations intended for marketing purposes and public consumption. For example, consider the following 2013 posting on Defendant Seattle’s “Powerlines” blog, an internally generated publication targeted at the public:

Green Power to the People – City Light is the Nation’s Greenest Utility

October 9, 2013 by thomses



Seattle City Light is The Nation’s Greenest Utility and we can back up that claim.

With the nation’s longest running conservation program, we have helped save Seattle City Light customers \$806 million on their bills since 1977. We are also environmental stewards to Mother Nature, which is why we study, protect and enhance the wildlife impacted by our business. We are a forward thinking utility and offer ways for our customers to support alternative and clean forms of electrical production.

Visit NationsGreenest.org to learn more about what Seattle City Light does to make the environment green and your wallet even greener.

Filed Under: [Power Lines](#) Tagged With: [nation’s greenest utility](#), [Seattle City Light](#)

2.31 Contrary to Defendant Seattle’s claims reflected in the preceding paragraph, Defendant Seattle is **not**, by any coherent and objective measurement, actually the “Nation’s Greenest Utility.” Virtually all other hydroelectric projects certified by LIHI actually provide upstream and downstream fish passage. Most hydroelectric projects in the Pacific Northwest are **not** LIHI Low Impact certified, yet these other hydroelectric projects nevertheless include upstream and downstream fish passage. The reality is that Defendant Seattle narrowly managed to avoid fish passage requirements while obtaining a highly questionable LIHI Low Impact certification, as previously set forth. It is therefore neither remotely true nor accurate for Defendant Seattle to publicly claim that Defendant Seattle is the “Nation’s Greenest Utility.”

1 **2.32** On February 18, 2021, Seattle-area television station KING 5 TV began running
2 an investigative series regarding Defendant Seattle’s Skagit Project.³⁰ The fourth installment
3 of the investigative series, which aired on March 18, 2021, was titled “Seattle City Light Told
4 Public Their Dam Operations Increased Salmon Runs As Fish Numbers Declined.” In the
5 episode, KING 5’s investigative team looked into the misinformation communicated by
6 Defendant Seattle, interviewing a ratepayer and member of the public who felt misled.³¹
7 Speaking on camera about Defendant Seattle’s statements about salmon numbers on the
8 Skagit below their Skagit Project, thirty year Seattle City Light ratepayer Lori Winemuller said
9 as follows: “That feels incredibly deceptive to me and irresponsible because [ratepayers] need
10 to know what the impact is,” Winnemuller said. “We’re not getting the full picture here.”
11

12 **2.33** In a subsequent installment of the KING 5 investigative series, airing on June 7,
13 2021, the KING 5 investigative team detailed the impact of declining salmon numbers on
14 endangered Southern Resident Killer Whales, and their connection to Defendant Seattle’s
15 Skagit Project. Referencing Defendant Seattle’s public misrepresentations about Skagit
16 salmon and their dams, Howard Garrett, co-founder and director of the Whidbey Island-based
17 Orca Network stated on camera: “I do feel like we’ve been misled. There’s been this kind of
18 cover up.”³²
19

20 **2.34** Plaintiff Sauk-Suiattle Indian Tribe participates in commercial fishery, as well as
21 hunting and gathering in the Skagit ecosystem, with its tribal reputation and brand inherently
22
23
24

25 ³⁰ See, “Seattle’s Skagit River Dams Hurt Salmon, Orcas and Native American Culture, KING 5 TV,
26 February 18, 2021, <https://www.king5.com/article/news/investigations/seattles-skagit-river-dams-hurt-salmon-orcas-and-native-american-culture-agencies-say/281-d4e483c2-1178-4af1-b8db-634e3b4009f7>
27 (last visited 9/15/2021).

28 ³¹ “Seattle City Light Told Public Their Dam Operations Increased Salmon Runs As Fish Numbers
29 Declined,” KING 5 TV, <https://www.king5.com/article/news/investigations/seattle-city-light-told-public-their-dam-operations-increased-salmon-runs-as-fish-numbers-declined/281-1e054962-327f-4ca1-bed0-2ab4f4445369>
30 (last visited 9/15/2021).

31 ³² “Seattle City Light Skagit River Dam Operations Should Help Feed Killer Whales,” KING 5 TV, June
32 7, 2021, <https://www.king5.com/article/news/investigations/seattle-city-light-skagit-river-dam-operations-should-improve-to-help-feed-killer-whales-orcas/281-a78a6c6d-f206-467a-9414-bd4a614ff9ae>
(last visited 9/15/2021).

1 connected to public perception and reputation of the health, environmental responsibility and
2 sustainability of the Skagit ecosystem, including the viability of its species and the management
3 of the river system by major actors such as Defendant Seattle.
4

5 **2.35** Plaintiff Sauk-Suiattle Indian Tribe has a usufructuary and thus property right
6 arising from its Treaty interests in fishing, hunting and gathering with the lands and waters of
7 the Skagit ecosystem, which Defendant Seattle’s deceptive trade practices have harmed.

8 **2.36** Defendant Seattle’s extensive campaign of misinformation and subsequent public
9 revelation thereof – otherwise known as “greenwashing” – has deeply harmed the Sauk-
10 Suiattle Indian Tribe and its interests. The “Magic Skagit” is well known as a place of
11 environmental consciousness, and the misleading and deceptive trade practices by which
12 Defendant Seattle has bolstered its own brand and reputation have come squarely at the
13 expense of the reputation of our people, our waters, and our lands.
14

15 **2.37** Our Tribe’s harm has been shared by the vast number of public electrical power
16 customers and environmental certification recipients that have, in ways far too numerous to
17 practicably assess or calculate, paid for LIHI Low Impact certified power derived from a
18 hydroelectric project that clearly fails to meet LIHI Low Impact standards, values and ethics,
19 their normal commercial defenses against “environmental snake oil” dulled by the overwhelming
20 weight of Defendant Seattle’s popularly-understood but entirely self-generated reputation for
21 ESG stewardship in the Skagit ecosystem.
22
23

24 **2.38** The harm caused by Defendant Seattle’s deceptive practices reverberates far
25 beyond the economic. While Skagit salmon numbers have plummeted, Defendant Seattle has
26 told stories of increasing salmon numbers while contributing the least to environmental
27 performance and claiming the most, undermining public faith in legitimate environmental
28 initiatives through the Skagit Valley and the region.
29

30 **2.39** The harm Plaintiff has experienced has been monetized by the Defendant Seattle
31 and wrongfully transferred into the pockets of each and every Seattle City Light electrical power
32

1 customer, each and every one of whom pays electrical rates far below the national average, a
2 privilege that rests in significant measure on the immense amounts of “green” money that the
3 Skagit Project generates for Defendant Seattle’s power utility – based on a LIHI certification,
4 brand and reputation for environmental responsibility that is wholly unjustified.
5

6 **2.40** In response to this Complaint, it can be anticipated that Defendant Seattle will
7 plead that it is currently engaged in a process pursuant to the Federal Power Act under the
8 auspices of FERC, by which it hopes to obtain a new federal operating license for the Skagit
9 Project, in the course of which, Defendant Seattle has publicly asserted, it is duly engaged in
10 the study of potential fish passage at its Skagit Project. But the reality is that Defendant Seattle
11 is abusing the ongoing FERC process to delay and escalate cost, all in an effort at avoiding its
12 obligations to install fish passage at the Skagit Project. Defendant Seattle’s prior federal
13 operating license, issued in 1995, took nearly two decades of study and debate, and Defendant
14 Seattle’s representatives have stated that they predict similar delay in the ongoing FERC
15 process. With multiple Skagit anadromous species on a trajectory toward extinction, the
16 process, study, expense and acrimony Defendant Seattle offers is an inadequate substitute for
17 the decisive action that Defendant Seattle’s LIHI Low Impact certification ought to involve.
18
19

20 **2.41** The Federal Power Act license that Defendant Seattle is presently seeking from
21 FERC is *not* equivalent to the obligations that Defendant Seattle voluntarily undertook when
22 seeking and obtaining LIHI Low Impact certification. Obtaining LIHI Low Impact certification
23 represents a wholly voluntary and affirmative public commitment by Defendant Seattle that it
24 will do considerably better by the environment and indigenous rights than a non-LIHI certified
25 hydroelectric operator.
26

27 **2.42** Defendant Seattle has done exactly the opposite. Over the past 25 years of its
28 current federal operating license, Defendant Seattle has financially contributed approximately
29 37 times less per megawatt to salmon recovery as mitigation for its Skagit Project than the
30 average Pacific Northwest hydro project operator. And compared to private investor-owned
31
32

1 Puget Sound Energy, which operates two hydroelectric dams with highly effective fish passage
2 systems on the Skagit-tributary Baker River, Defendant Seattle is contributing approximately
3 59 times less by way of salmon mitigation dollars per megawatt of power produced,
4 notwithstanding the fact that Puget Sound Energy's Baker Project is *not* a LIHI Low Impact
5 certified facility.
6

7 **2.43** As such, in all ways relevant, Defendant Seattle is doing considerably **less** for the
8 environment, social justice, and indigenous rights than virtually every other hydroelectric
9 operator in the region, none of whom claim to be LIHI Low Impact certified, or "the Nation's
10 Greenest Utility."
11

12 **2.44** In 2013 testimony before the U.S. House of Representatives Committee on
13 Natural Resources, LIHI Executive Director Dr. Michael Sale clearly explained that the LIHI Low
14 Impact certification of the Skagit Project is a question of national significance, and a cornerstone
15 of the LIHI Low Impact certification program itself:
16

17 The largest project we have certified is Seattle City Light's Skagit
18 River project, which has a total capacity of about 700 MW and
19 includes three dams, 300 to 600 feet in height. The fact that such
20 large dams can be designed and operated in a way that protects
21 and enhances the environment is one of the more important
22 outcomes from our certification program.³³

23 **2.45** In his 2013 testimony, Dr. Sale further expressed that the public should not be
24 expected to rely on a FERC license issued pursuant to the Federal Power Act as an adequate
25 safeguard for environmental and indigenous concerns, but rather should look to LIHI Low
26 Impact certification to ensure that hydroelectric projects are being operated in a manner
27 adequately respectful of environmental concerns:
28

29
30
31 ³³ Testimony of Dr. Michael J. Sale, PhD, on "Keeping Hydropower Affordable and Reliable: The
32 Protection of Existing Hydropower Investments and the Promotion of New Development", before the
U.S. House of Representatives' Committee on Natural Resources, Subcommittee on Water and Power,
September 9, 2013, at page 2 (copy on file).

1 The argument is sometimes made that a current FERC license is a
2 sufficient measure of “low-impact” or environmental
3 preferability....FERC is not, and probably should not be, required to
4 choose the environmentally preferable alternative in its licensing
5 decisions. In some cases, FERC does not even consider the
6 environmentally preferable alternative. The end result is that the
7 consumer cannot assume that a FERC-licensed project is meeting
8 the highest standards for environmental performance over the full
9 spectrum of potential impacts. An additional process such as our LIHI
10 Program is needed.³⁴

11 **2.46** Plaintiff fully agrees with LIHI and its Executive Director: Plaintiff cannot rely on
12 the FERC process to ensure that our environmental values are satisfactorily met with respect
13 to Defendant Seattle’s Skagit Project. But neither does it appear that Plaintiff can rely on LIHI’s
14 Low Impact certification.

15 **2.47** Over the course of the past several years, Defendant Seattle’s political leadership
16 has been repeatedly and plaintively asked by Plaintiff and other tribes to agree to cooperatively
17 design, fund, and build fish passage at a regionally equitable level.

18 **2.48** For more than a year, Seattle’s political leadership has refused to so much as
19 respond, let alone agree to cooperatively design, build and construct fish passage at a
20 regionally equitable level, instead giving political cover for Seattle City Light staff to create as
21 much delay, expense and obfuscation within the FERC process as possible.

22 **2.49** Defendant Seattle’s extensive “greenwashing” campaign as set forth herein is
23 centrally implicated in Defendant Seattle’s failure to provide fish passage and current
24 obstructionist approach to the FERC process, in that Defendant Seattle has only been able to
25 avoid public scrutiny by leaning on the extensive political, market and social clout it has built
26 through relentless misrepresentation of its environmental responsibility, turning its unearned
27 reputation for environmental rectitude against the very indigenous peoples that Defendant
28 Seattle frequently claims to care about.

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³⁴ *Id.* at 3.

1 **2.50** Plainly stated, Defendant Seattle is “greenwashing” Skagit-derived electricity to
2 the detriment of indigenous rights, the Skagit fisheries resource, the Skagit ecosystem,
3 Defendant Seattle’s ratepayers and wholesale customers, countless recipients of various forms
4 of environmental certification, and the American public in general. Plaintiff contends that this is
5 an impermissible and deceptive trade practice under the laws of the State of Washington,
6 including the Washington State Consumer Protection Act, RCW 19.86.
7

8 **III. PLAINTIFF’S INDIVIDUAL CAUSES OF ACTION**

9 **UNFAIR BUSINESS PRACTICE/CONSUMER PROTECTION ACT**

10 **3.1** Plaintiff re-asserts and re-alleges each of the foregoing allegations and
11 incorporates them herein by reference.
12

13 **3.2** Defendant Seattle has engaged in unfair and deceptive practices in the course of
14 trade and commerce, which deceived or had the capacity to deceive a substantial portion of the
15 public;
16

17 **3.3** The unfair or deceptive practice impacts the public interest;

18 **3.4** The unfair or deceptive practice has damaged Plaintiff in its business, trade and
19 property, causally arising from Defendant Seattle’s unfair and/or deceptive acts.
20

21 **3.5** Defendant Seattle’s acts and omissions are in violation of the Unfair
22 Business Practices/Consumer Protection Act, RCW Chapter 19.86.
23

24 **3.6** As a direct and proximate result thereof, Defendant Seattle is are liable to Plaintiffs
25 for declaratory and injunctive relief, together with attorneys' fees and costs pursuant to [RCW](#)
26 [19.86.090](#), all in an amount to be determined at trial.
27

28 **DECLARATORY RELIEF**

29 **3.7** A present controversy exists as to whether it constitutes an unfair or deceptive
30 practice for Defendant Seattle, under the circumstances and facts alleged herein, to continue to
31 brand and represent in trade and commerce (a) that electricity from its Skagit Project is “green
32 power”, “LIHI Low Impact certified”, “environmentally responsible”, or (b) that Seattle is the

1 “Nation’s Greenest Utility”, “a responsible stewardship of the Skagit”, and other such statements
2 of broad ESG responsibility as they pertain to the Skagit.

3 **3.8** Because the Defendant Seattle’s assertions of environmental responsibility in
4 excess of legal requirements including LIHI Low Impact certification are ultimately attributes
5 and characteristics of the management and use of the Skagit ecosystem, the degradation,
6 diminishment and defamation of the reputation of the Skagit ecosystem through misleading and
7 “greenwashed” language directly and significantly impacts and harms Plaintiff Sauk-Suiattle.

8
9 **3.9** Plaintiff Sauk-Suiattle is therefore entitled to a declaratory order declaring that it
10 constitutes a deceptive trade practice for Defendant Seattle to continue asserting any form of
11 above-average environmental responsibility in the management and operation of the Skagit
12 Project, including but not limited to assertions by Defendant Seattle regarding its LIHI Low
13 Impact certification; “green power”, “environmental responsibility”; “Steward of the Skagit
14 ecosystem”, the “Nation’s Greenest Utility”, and any and all such other terms and phrases
15 implying ESG conduct that is above the bare minimum imposed by federal law, to the extent
16 they pertain to the Skagit River and its ecosystem.

17
18 **3.10** Defendant Seattle’s use of the LIHI Low Impact certification mark is inconsistent
19 with LIHI’s own standards and was obtained under highly irregular circumstances. Defendant
20 Seattle’s use of the LIHI Low Impact certification mark damages Plaintiff Sauk-Suiattle and the
21 public as set forth in this Complaint. Plaintiff Sauk-Suiattle is entitled to an order declaring
22 that Defendant Seattle’s use of the LIHI Low Impact certification mark constitutes an deceptive
23 business practice pending recertification.

24 **INJUNCTIVE RELIEF**

25
26 **3.11** Plaintiff Sauk-Suiattle Indian Tribe is irreparably harmed at economic, cultural
27 spiritual and other levels by Defendant Seattle’s ongoing “greenwashing” of the Skagit Project
28 in a manner wholly inconsistent with Defendant Seattle’s actual performance, and said interests
29 cannot be adequately protected or redressed by a judgment in damages
30
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32

1 c. Has Defendant Seattle made environmental responsibility claims that
2 exceed the scope of Defendant Seattle's existing LIHI Low Impact certification?

3 d. Has Defendant Seattle made the claim in trade and commerce that it is the
4 "Nation's Greenest Utility"?

5 e. What generalized claims of environmental responsibility above the bare
6 minimum required by federal law is Defendant Seattle making in trade and commerce with
7 respect to the Skagit River and its ecosystem, relevant to the Skagit Project

8 f. What other deceptive practices is Defendant Seattle utilizing and pursuing
9 in respect to the Skagit River and Defendant Seattle's Skagit Project?

10
11
12 **4.4** The following questions of law are common to the class:

13 a. Under the circumstances presented herein, is Defendant Seattle's
14 maintenance of an LIHI Low Impact Hydro certification an unfair or deceptive trade practice?

15 b. Under the circumstances presented herein, is Defendant Seattle's claim to
16 LIHI Low Impact Hydro certification inconsistent with LIHI's governing criteria, and therefore a
17 deceptive practice?

18 c. Has Defendant Seattle asserted environmental claims in excess of the LIHI
19 Low Impact certification, thus constituting a deceptive practice?

20 d. By claiming the title of the "Nation's Greenest Utility" in trade and
21 commerce, is Defendant Seattle engaging in an unfair and deceptive trade practice?

22 e. In making certain generalized claims of superlative environmental
23 stewardship claims related to the Skagit Project above the bare minimum required by federal
24 law, is Defendant Seattle engaging in a deceptive practice?

25 f. Under the facts of this case, is the Plaintiff class entitled to declaratory
26 and/or injunctive relief prohibiting Defendant Seattle from using generalized "greenwashing"
27 terms that communicate it above-average environmental responsibility?
28
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1 g. Such other questions of law related to the foregoing as may arise in the
2 course of discovery.

3
4 **4.5** The claims of the Plaintiff Sauk-Suiattle Indian Tribe against Defendant Seattle
5 are typical of the claims of the class generally because each class member is impacted by
6 Defendant Seattle's unfair and deceptive practice, which Plaintiff Sauk-Suiattle Indian Tribe
7 seeks to enjoin.

8
9 **4.6** Plaintiff Sauk-Suiattle Indian Tribe will fairly and adequately protect the interests
10 of the class generally, because Plaintiff Sauk-Suiattle Indian Tribe is principally seeking to
11 require that Defendant Seattle desist from misrepresentation Defendant Seattle's ESG
12 stewardship in the Skagit Basin, a question that impacts the community at large:.

13 a. The Plaintiff Sauk-Suiattle Indian Tribe's interest in prosecuting its claims
14 against Defendant Seattle are therefore identical to the interests of absent class members.

15 b. The named plaintiff has sufficient resources to prosecute the action and
16 has retained experienced and competent trial counsel in the subject matter and specialized
17 area of law.

18 c. The named plaintiff has background, experience and knowledge in the
19 question of the Skagit River, the Skagit Project and the relevant environmental issues at stake,
20 in part by permanent occupation of the Skagit River Basin for approximately 8,000 years.

21
22 **4.7** Class certification is appropriate pursuant to CR 23(b)(1)(A) and (B) because the
23 prosecution of separate actions by the individual members of the class against Defendant
24 Seattle would, as a practical matter, be dispositive of the interests of the other members of the
25 class not parties to the adjudications or will substantially impair or impede their ability to protect
26 their interests.

27
28 **4.8** Class certification is appropriate pursuant to CR 23(b)(2) because party opposing
29 the class, Defendant Seattle, has acted or refused to act on grounds generally applicable to the
30 class – namely, “greenwashing” its environmental performance in the Skagit Basin – thereby
31

1 making appropriate final injunctive relief or corresponding declaratory relief with respect to the
2 class as a whole.

3 **4.9** Class certification is furthermore appropriate pursuant to CR 23(b)(3). In this
4 instance, given the unity of interest in ensuring that Defendant Seattle is adhering to the purpose
5 and scope of LIHI Low Impact “green power” certification and not “greenwashing” its ESG
6 stewardship; the fact that there is no other pending litigation relevant to this controversy;the
7 ease of managing this litigation in Defendant Seattle’s home county;and the ease of managing
8 the class through reasonable media notice, thus a Court should properly find that the questions
9 of law or fact common to the members of the class predominate over any questions affecting
10 only individual members, and that a class action is superior to other available methods for the
11 fair and efficient adjudication of the controversy.

12 **V. CLASS CAUSE OF ACTION**

13 **5.1** Plaintiff Sauk-Suiattle restates its causes of action seeking declaratory and
14 injunctive relief set forth in Section 3, *supra*, on behalf of the putative class.

15 **VI. REQUEST FOR RELIEF**

16 WHEREFORE, the Plaintiff Sauk-Suiattle Indian Tribe, on behalf of itself individually and on
17 behalf of the putative class, herein respectfully request the following relief:

18 **6.1** That the Court issue an order declaring that it constitutes a deceptive practice for
19 Defendant Seattle to continue making assertions about its allegedly above-average
20 environmental responsibility in the management and operation of the Skagit Project, including
21 but not limited to assertions by Defendant Seattle regarding its LIHI Low Impact certification;
22 “green power”; “environmental responsibility”; “Steward of the Skagit ecosystem”; the “Nation’s
23 Greenest Utility”, and any and all such other generalized “greenwashing” terms and phrases
24 implying environmental, social responsibility and governance conduct in any manner above the
25 bare minimum imposed by federal law, to the extent such claims pertain to the Skagit River
26 ecosystem, the Skagit fisheries resource, the environment generally, and indigenous rights.

1 **6.2** That the Court further declare that Defendant Seattle’s LIHI Low Impact
2 certification was obtained under improper circumstances, and that LIHI should be required to
3 conduct an immediate recertification process to the extent that Defendant Seattle wishes to
4 continue using the “LIHI Low Impact” certification in trade and commerce within the State of
5 Washington.
6

7 **6.3** That the Court issue an injunctive order prohibiting Defendant Seattle from
8 making assertions about its allegedly above-average environmental responsibility in the
9 management and operation of the Skagit Project, including but not limited to assertions by
10 Defendant Seattle regarding its LIHI Low Impact certification; “green power”; “environmental
11 responsibility”; “steward of the Skagit ecosystem”, the “Nation’s Greenest Utility”, and any and
12 all such other generalized “greenwashing” terms and phrases implying environmental, social
13 responsibility and governance conduct in any manner above the bare minimum imposed by
14 federal law, to the extent such claims pertain to the Skagit River ecosystem, the Skagit fisheries
15 resource, the environment, and indigenous rights generally. This is not meant to prohibit any
16 demonstrably accurate factual claims by Defendant Seattle regarding specific and scientifically
17 observable actions it has undertaken.
18
19

20 **6.4** An injunction prohibiting Defendant Seattle from continuing to use the LIHI Low
21 Impact certification in trade or commerce until a public and transparent recertification process
22 is conducted that takes into full consideration the issues raised in this Complaint.
23

24 **6.5** Awarding Plaintiff Sauk-Suiattle Indian Tribe and the plaintiff class their
25 reasonable and/or statutory attorneys and costs.
26

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