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OFFICE OF THE
SECRETARY

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FEDERAL ENERGY
REGULATORY COMMISSION



March 30, 2005

Magalie R. Salas, Secretary
FEDERAL ENERGY REGULATORY COMMISSION
888 1st Street, NE, Docket Room 1A-East
Washington D.C. 20426-0002

Re: Kilarc-Cow Creek, FERC Project No. 606

Dear Ms. Salas:

Enclosed please find an original and eight (8) copies of the executed Kilarc-Cow Creek Project Agreement ("Agreement") by and between Pacific Gas and Electric Company ("PG&E"), U.S. Fish and Wildlife Service, California Department of Fish and Game, National Park Service, California State Water Resources Control Board, NOAA Fisheries, Trout Unlimited, and Friends of the River in regard to the above referenced Kilarc-Cow Creek Project ("Project"). Under the Agreement, PG&E will not seek a new FERC license for the Project but will continue operating it until the current license expires on March 27, 2007 and on annual licenses thereafter until the Project is: (1) acquired by another license applicant; or (2) decommissioned by FERC order.

PG&E extensively analyzed anticipated new license conditions and determined that such conditions would make the Project an uneconomic source of power. This determination led to the development and execution of the Agreement. In the event FERC orders the Project to be decommissioned, the Agreement identifies what the signatory parties believe are the subjects that would need to be addressed and the desired condition of each of these subjects after decommissioning. PG&E used this indication of decommissioning scope along with other considerations in reaching its decision to enter into the Agreement and not file an application for new license. Specific actions necessary to achieve the desired conditions would be determined in the future. The Agreement also addresses the transferring of water rights, upon decommissioning, to a resource agency or other entity to support spring run Chinook salmon and steelhead trout.

On August 17, 2004 FERC representatives participated in a meeting, via conference call, with the signatory parties to discuss the possibility of PG&E not filing a relicensing application. Prior to and after that call, Steve Nevares, PG&E's Project Manager for the



Magalie R. Salas, Secretary
FEDERAL ENERGY REGULATORY COMMISSION
March 30, 2005
Page Two

Kilarc-Cow Creek Relicensing Project, has been in contact with FERC staff regarding developments. Most recently, on January 19, 2005, Mr. Nevares updated FERC's Tim Welch, Emily Carter, and Alan Mitchnick on the status of the Agreement.

If you have any questions regarding the attached Agreement, you may contact Steve Nevares at (415) 973-3174, e-mail SAN3@pge.com, or myself at (415) 973-7145, e-mail ARF3@pge.com.

Very truly yours,

A handwritten signature in cursive script that reads "Annette Faraglia".

Annette Faraglia

Attachment

- cc: Ms. Emily Carter
Mr. Robert Fletcher
Mr. Hossein Ildari
Mr. Alan Mitchnick
Mr. Timothy Welch

- Mr. Wayne White, Field Supervisor, U.S. Fish & Wildlife Service
Mr. Donald B. Koch, Regional Manager, California Department of Fish & Game
Mr. Jonathan B. Jarvis, Regional Director, National Park Service, Pacific West Region
Ms. Victoria A. Whitney, Chief Div. of Water Rights, CA State Water Resources Control Bd.
Mr. Rodney McInnis, Regional Administrator, NOAA Fisheries
Mr. Steven Evans, Conservation Director, Friends of The River
Charles Bonham, Esq., California Counsel, Trout Unlimited

Service List for Kilarc Cow-Creek Project, FERC Project No. 606

Kilarc-Cow Creek Project Agreement

This Agreement regarding the Kilarc-Cow Creek Project ("Agreement") is signed as of *March 22* 2005 ("Effective Date") by and among Pacific Gas & Electric Company, a California corporation (the "Company"), U.S. Fish and Wildlife Service, California Department of Fish and Game, National Parks Service, California State Water Resources Control Board, Nation Marine Fisheries Service, Friends of the River, and Trout Unlimited. The signatories to this Agreement are referred to individually as a "Party" or collectively as the "Parties".

PROJECT BACKGROUND

A. The Kilarc-Cow Creek Project is licensed by the Federal Energy Regulatory Commission ("FERC") as FERC Project No. 606 (the "Project"). The Project is located in Shasta County, California along Old Cow Creek and South Cow Creek. The Project consists of Kilarc Powerhouse and Cow Creek Powerhouse along with related canals, penstocks, forebays and other structures.

B. The current FERC license for the Project expires on March 27, 2007. For the last two years the Company has been following the process prescribed in the Federal Power Act to obtain a new license. The Company's application for a new license is due to FERC by March 27, 2005. The Parties to this Agreement have been participants in the Company's relicensing process for the Project.

C. Due to the complex and competing resource issues associated with the Project, in *early 2004* the Company decided to explore decommissioning as an alternative to relicensing the Project. The Company requested that the Parties participate in evaluating actions that would be necessary should the Project be decommissioned. This led to the Parties identifying a list of subjects and desired conditions to be addressed should the Project be decommissioned. The subjects and desired conditions are listed in Attachment A, which is incorporated herein by reference.

D. The Company's evaluation of the cost of decommissioning the Project based on the subjects and desired conditions in Attachment A versus operating the Project under a new license with the anticipated conditions, show that under a new license the Project would be a high cost source of energy and would not be competitive with other generation sources. This evaluation was only possible once the relicensing work had proceeded to the point where potential conditions of a new license could be identified by the Parties.

E. Based on the Parties' consensus regarding the subjects and desired conditions in Attachment A, the Company is willing to stop work on relicensing the Project and not file a new license application. The Company is also willing to support decommissioning the Project based on its determination that decommissioning is a viable and cost-effective alternative to relicensing.

F. By not filing an application for new license by the statutory deadline of March 27, 2005, the Company will lose its incumbent licensee status and forgo its opportunity to relicense the Project. Under 18 C.F.R. §16.18, FERC is authorized to issue annual licenses to the Company pending determination of the future status of the Project. The United States may seek to take over the Project, or other entities may apply for the Project license within a time period set by FERC under 18 C.F.R. §16.25. Other entities may also apply for the Project license prior to March 27, 2005. If no timely applications are received, FERC will order the Company to prepare and file a license surrender application in compliance with FERC's rules that provides for the disposition of Project facilities.

AGREEMENT

1. RELICENSING

1.1 The Company agrees not to file an application for new license for the Project. The other Parties support this action.

1.2 Entities other than the Company may seek to acquire a new license for the Project following the FERC prescribed process. The Parties accept that if an entity other than the Company indicates an interest in licensing the Project, the Company will need to provide such entities with Project information as required, including the results of relicensing studies performed to date. Additionally, the Parties accept that in such circumstances the Company will not hinder the efforts of such entities to obtain a license for the Project.

1.3 The Company will continue to operate the Project under the terms and conditions of the existing license until it expires on March 27, 2007, and then on annual licenses issued by FERC under 18 C.F.R. §16.18 until the Project is transferred to another licensee, or is decommissioned. The Company recognizes that during the period of annual license, if any, the Parties may work together, or individually, or with FERC to establish mutually acceptable environmental measures that improve water quality and/or conditions for state and federally protected species. The Parties recognize that FERC may incorporate additional or revised interim conditions in annual licenses if necessary and practical to limit adverse impacts on the environment under 18 C.F.R. §16.18(d). Any Company application for license surrender filed pursuant to 18 C.F.R. §16.25 shall provide for disposition of the Project facilities.

2. GOVERNMENTAL PARTIES RETAIN AUTHORITIES

WWS 2.1 Notwithstanding this Agreement, the Parties ^{that} ~~which~~ are governmental agencies retain all of their authorities and mandates related to the Project, the Project-affected resources and the Company's ongoing relicensing or surrender of license proceeding, and to any new licensing proceeding that may be initiated for this Project. Such authorities and mandates are not diminished in any way by these Parties entering into this Agreement. Entering into this Agreement is not in any manner a pre-decisional act or commitment by any of the governmental agencies as to the disposition of the Project assets or water rights.

2.2 Notwithstanding this Agreement, the Parties that are non-governmental organizations retain all of their rights related to the Project, the Project-affected resources and the Company's ongoing relicensing proceeding, and to any new licensing proceeding that may be initiated for this Project. Such rights are not diminished in any way by these Parties entering into this Agreement. Entering into this Agreement is not in any manner a pre-decisional act or commitment by any of the non-governmental organizations as to the disposition of the Project assets or water rights.

3. DECOMMISSIONING

3.1 The Company commits to supporting decommissioning the Project based on decommissioning being the viable and cost effective alternative to relicensing.

3.2 If FERC authorizes or orders the Company to decommission the Project, upon a final order from FERC ending Project power operations, the Company intends to transfer its appropriative water rights held for operation of the Project ("water rights") to a resource agency or other entity that: 1) agrees to use the water rights to protect, preserve, and/or enhance aquatic resources, as authorized by applicable laws and regulations, such as Water Code section 1707; and 2) is acceptable to the Parties. Additionally, prior to transferring of its water rights, the Company will work in good faith with other non-Parties to resolve potential water rights issues with the goal of having the water rights used to preserve, protect and/or enhance aquatic resources.

3.3 In the event the Company files or is ordered by FERC to file a surrender application, which the Company agrees will include a decommissioning plan, the subjects and desired conditions in Attachment A represent the Parties' good faith effort at this time to identify the subjects that would need to be addressed and the desired condition of each of these subjects after decommissioning of the Project. It is the Parties' intent that the surrender application and decommissioning plan will define these subjects and desired conditions more fully and identify the actions to be taken by which the desired conditions will be met. If a consensus agreement cannot be reached, the dissenting Party will submit written documentation in the form of a letter to the other Parties explaining the dissenting Party's reasons for not agreeing with the other Parties. This letter will become part of the decommissioning record.

3.4 The subjects and desired conditions in Attachment A are based on limited information and subject to change by consensus of the Parties based on additional information that may become available or compliance with applicable laws and regulations. Consensus means that all Parties involved in a decision can "live with" that decision even if the decision is not exactly as each Party would desire.

3.5 Additional subjects and desired conditions may be added to this Agreement by a consensus decision-making process among the Parties.

3.6 If the Company files, or is ordered by FERC to file a surrender application and a decommissioning plan, the Parties will work collaboratively to develop the surrender schedule and decommissioning plan. The decommissioning plan will identify and refine the actions

necessary to address the subjects and desired conditions in Attachment A following decommissioning of the Project and will be consistent with legal requirements and obligations to FERC, and other applicable state and federal laws. Decisions on actions to address the subjects and desired conditions in Attachment A will be made by consensus of all Parties involved in the decommissioning plan's development.

3.7 To the extent permissible, the Parties will support the Company in the necessary regulatory processes to decommission the Project, including the Company's efforts before the CPUC to recover the costs the Company incurs to decommission the Project in accordance with Attachment A.

4. NEW PARTIES

Additional governmental agencies, groups and individuals may become Parties to this Agreement.

5. COMMUNICATIONS TO THE PUBLIC

This Agreement and the work that may be needed to assist the Company and the Parties in developing a detailed decommissioning proposal are open to members of the public.

6. TERM OF AGREEMENT

6.1 This Agreement shall remain in effect until the later of 1) March 27, 2007; 2) the date the Project license is transferred to a new licensee; or 3) completion of the decommissioning of the Project under a FERC order and the final order from FERC ending the Company's responsibilities as the licensee of the Project, unless this Agreement is terminated sooner pursuant to the terms of this Agreement.

6.2 Each Party has the option of withdrawing from this Agreement by providing written notice to the other Parties explaining the reasons for the proposed withdrawal and affording the other Parties thirty (30) calendar days to consult and seek alternatives to such withdrawal. All Parties agree they will not arbitrarily withdraw from the Agreement and will make a good faith effort to consult with the other Parties to resolve any dispute prior to withdrawal.

6.3 Withdrawal by the Company terminates this Agreement. Grounds for Company withdrawal include, but are not limited to, the CPUC's failure to authorize the Company to fully recover in rates its decommissioning costs.

6.4 This Agreement can also be terminated by unanimous agreement of the Parties.

7. MISCELLANEOUS PROVISIONS

7.1 There are no intended third-party beneficiaries of this Agreement.

7.2 This Agreement does not create any rights, interests, claims or causes of action at law or in equity for any Party against another Party, or for any non-party against any Party.

7.3 Each person signing this Agreement on behalf of a Party represents that she or he is authorized to sign the Agreement on the Party's behalf.

7.4 This Agreement does not make any Party the agent or representative of any other Party, and this Agreement does not create any partnership or venture between or among the Parties.

7.5 This Agreement may be signed in counterparts by the Parties, and the signed counterparts taken together shall constitute one complete Agreement. A facsimile signature by a Party on a counterpart of this Agreement is as valid as the original signature.

Attachment A: Kilarc-Cow Creek Project Decommissioning Agreement Subjects and Desired Conditions

The Parties have signed this Agreement as of the dates listed below.

U. S. Fish and Wildlife Service

California Dept. of Fish and Game

By: _____
Wayne White, Field Supervisor

By: _____
Donald B. Koch, Regional Manager

Dated: _____

Dated: _____

**National Park Service
Pacific West Region**

**California State Water
Resources Control Board**

By: _____
Jonathan B. Jarvis, Regional Director

By: _____
Victoria A. Whitney, Chief, Div. of Water Rights

Dated: _____

Dated: _____

NOAA Fisheries

Friends of The River

By: _____
Rodney McInnis, Regional Administrator

By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: _____

7.2 This Agreement does not create any rights, interests, claims or causes of action at law or in equity for any Party against another Party, or for any non-party against any Party.

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Attachment A: Kilarc-Cow Creek Project Decommissioning Agreement Subjects and Desired Conditions

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U. S. Fish and Wildlife Service

California Dept. of Fish and Game

By: Kenneth Sanchez
Wayne White, Field Supervisor

By: _____
Donald B. Koch, Regional Manager

Dated: 3/4/05

Dated: _____

**National Park Service
Pacific West Region**

**California State Water
Resources Control Board**

By: _____
Jonathan B. Jarvis, Regional Director

By: _____
Edward Anton, Chief, Div. of Water Rights

Dated: _____

Dated: _____

NOAA Fisheries

Friends of The River

By: _____
Rodney McInnis, Regional Administrator

By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: _____

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California Dept. of Fish and Game

By: _____
Wayne White, Field Supervisor

By: Donald Koch
Donald B. Koch, Regional Manager

Dated: _____

Dated: March 1, 2005

**National Park Service
Pacific West Region**

**California State Water
Resources Control Board**

By: _____
Jonathan B. Jarvis, Regional Director

By: _____
Edward Anton, Chief, Div. of Water Rights

Dated: _____

Dated: _____

NOAA Fisheries

Friends of The River

By: _____
Rodney McInnis, Regional Administrator

By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: _____

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Wayne White, Field Supervisor

By: _____
Donald B. Koch, Regional Manager

Dated: _____

Dated: _____

**National Park Service
Pacific West Region**

**California State Water
Resources Control Board**

By: 
Jonathan B. Jarvis, Regional Director

By: _____
Edward Anton, Chief, Div. of Water Rights

Dated: 3/16/05

Dated: _____

NOAA Fisheries

Friends of The River

By: _____
Rodney McInnis, Regional Administrator

By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: _____

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California Dept. of Fish and Game
By: _____
Donald B. Koch, Regional Manager

Dated: _____

Dated: _____

**National Park Service
Pacific West Region**
By: _____
Jonathan B. Jarvis, Regional Director

**California State Water
Resources Control Board**
By: Victoria A. Whitney
Victoria A. Whitney, Chief
Div. of Water Rights

Dated: _____

Dated: March 17, 2005

NOAA Fisheries
By: _____
Rodney McInnis, Regional Administrator

Friends of The River
By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: _____

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Donald B. Koch, Regional Manager

Dated: _____

Dated: _____

**National Park Service
Pacific West Region**

**California State Water
Resources Control Board**

By: _____
Jonathan B. Jarvis, Regional Director

By: _____
Edward Anton, Chief, Div. of Water Rights

Dated: _____

Dated: _____

NOAA Fisheries

Friends of The River

By: Rodney R M McInnis
Rodney McInnis, Regional Administrator

By: _____
Steve Evans, Conservation Director

Dated: 3-3-05

Dated: _____

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Dated: _____

Dated: _____

**National Park Service
Pacific West Region**

By: _____
Jonathan B. Jarvis, Regional Director

**California State Water
Resources Control Board**

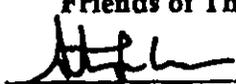
By: _____
Edward Anton, Chief, Div. of Water Rights

Dated: _____

Dated: _____

NOAA Fisheries

By: _____
Rodney McInnis, Regional Administrator

Friends of The River

By: _____
Steve Evans, Conservation Director

Dated: _____

Dated: Feb 25, 2005

Trout Unlimited

By: 
Chuck Bonham, California Counsel

Dated: 03/03/2005

Pacific Gas and Electric Company

By: _____
Gregory M. Rueger
Sr. Vice President Generation and Chief Nuclear Officer

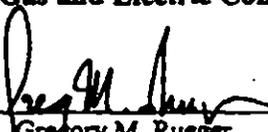
Dated: _____

Trout Unlimited

By: _____
Chuck Bonham, California Counsel

Dated: _____

Pacific Gas and Electric Company

By:  _____
Gregory M. Rueger

Sr. Vice President Generation and Chief Nuclear Officer

Dated: March 22, 2005

Attachment A

Kilarc-Cow Creek Project Agreement Subjects and Desired Conditions

Subjects Addressed

Following is a list of subject areas (numbered items) and desired conditions (lettered items) addressed the Decommissioning Alternative Agency and Stakeholder meetings in the context of an Agreement for decommissioning the Kilarc-Cow Creek Project.

1. **Cost for Implementing Decommissioning**
 - a) **Costs are known**
 - b) **Economics are favorable (i.e., more favorable than relicensing)**
 - c) **Funds for implementation, monitoring and contingency are identified**

2. **Disposition of Diversion Structures**
 - a) **Safe, timely, and effective passage up/downstream for fish**
 - b) **Geomorphically stable stream channel above/below/at diversions**
 - c) **Retain as much spawning gravel as possible in active channel during deconstruction activities**
 - d) **Safety issues addressed - public and wildlife**

3. **Disposition of Canals and Spillways (includes waterways, tunnels and flumes)**
 - a) **Stable drainage of runoff to natural waterways including:**
 - **Safe, timely, and effective fish passage**
 - **Maintain good water quality**
 - **Does not contribute sediment to drainage and streams**
 - b) **Preservation of riparian habitat during/after deconstruction wherever possible**
 - c) **Maintain floodplain connectivity**
 - d) **Safety issues addressed - public and wildlife**

4. **Disposition of Forebays**
 - a) **Geomorphically stable sediment conditions**
 - b) **Appropriate fish and wildlife rescue/salvage prior to deconstruction activities**

5. **Disposition of Penstocks**
 - a) **Safety issues addressed - public and wildlife**

6. **Disposition of Powerhouses (includes switchyards)**
 - a) **Safety issues addressed - public and wildlife**
 - b) **Historical/cultural values preserved**
 - c) **Preserve options for future reuse of structures other than powerhouses**

7. **Disposition of Water Rights**
 - a) PG&E appropriate water rights are protected and used to preserve or enhance aquatic resources
 - b) Other water right holders rights are preserved
 - c) All water rights preserved subject to the law
 - d) Water rights are enforceable and permanent
 - e) Maintain aquatic habitat values downstream of Hooten Gulch
8. **PG&E Lands (as managed by a land trust)**
 - a) Promote land use consistent with ecological function of streams
 - b) Safety issues addressed - public and wildlife
9. **Public Recreation Opportunities**
 - a) Achieve balance between lost recreation opportunities at Kilarc forebay with other recreation opportunities (e.g., fishing and picnicking)
 - b) Recreation stream fisheries opportunities enhanced
 - c) Public access available to recreational opportunities
10. **FERC Approval for Decommissioning**
 - a) Timely FERC approval of decommissioning alternative consistent with the Agreement
11. **CPUC Rate Recovery for Decommissioning**
 - a) Full and timely rate recovery for decommissioning costs
12. **Post Decommissioning Licensee Responsibilities**
 - a) Decommissioning desired conditions are maintained post-decommissioning for specified time period
 - b) Scope and cost of responsibilities are known
13. **Permit Approval Process**
 - a) Timely identification and issuance of required permits
 - b) Permit conditions consistent with the Agreement
 - c) Environmental benefits of decommissioning outweigh impacts to resources
14. **Implementation Schedule**
 - a) Decommissioning schedule is approved with clearly defined timeframe
15. **Roads and Access Routes**
 - a) Best management practices for retiring roads where possible to minimize sediment
16. **Protection of Special Status Species**
 - a) Compliance with California Endangered Species Act and Endangered Species Act

17. Deconstruction Activities

- a) **Current water right holders continue to receive their water**
- b) **Where practicable, no net loss in the health of riparian and aquatic habitat areas as a result of deconstruction activities**
- c) **Allows natural revegetation**
- d) **Timing of decommissioning activities are scheduled to avoid adverse effects on fish/wildlife**
- e) **Minimal water quality impairment during deconstruction and immediately thereafter including turbidity, settleable solids, suspended solids**
- f) **Appropriate fish and wildlife rescue/salvage prior to deconstruction activities**