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SCOTT A. MORRIS

September 18, 2007

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EXTERNAL AFFAIRS
2007 SEP 25 P 3:25
FEDERAL ENERGY COMMISSION

ORIGINAL

Mr. Steven Nevares
Project Manager
Pacific Gas & Electric
M.C. N11D
P.O. Box 770000
San Francisco, CA 95117

Re: Impacts of Decommissioning of Kilarc - Cow Creek Hydroelectric Project
on the Tetrick Ranch

Dear Mr. Nevares:

This firm represents Mr. and Mrs. Steven Tetrick, who own the Tetrick Ranch located along South Cow Creek. Pacific Gas and Electric's ("PG&E's") South Cow Creek powerhouse ("Powerhouse") is sited on a parcel acquired from a prior owner of the Tetrick Ranch property, and most of the underground penstock for the Powerhouse is located on Tetrick Ranch lands. The Powerhouse is part of the Kilarc-Cow Creek Hydroelectric Project ("Kilarc Project"), and the decommissioning as proposed the Kilarc Project will significantly impact the Tetrick Ranch, particularly if all diversions of water through the Powerhouse are terminated. We will be submitting additional comments on your just released Preliminary Proposed Decommissioning Plan under separate cover.

For reasons which will be discussed herein, it is our position that the Powerhouse must either continue to be operated by others, or continue water diversions through existing diversions after decommissioning, so that Tetrick Ranch and others can continue their operations which have relied upon the releases of water from the Powerhouse for so many years. This is not to say PG&E must operate the Powerhouse itself, but it must make it available to others, such as the Tetricks, to continue some reasonable form of operation so as to discharge water at the same location. Continued hydropower generation at the Powerhouse is the logical choice so that the revenues needed to fund operation and maintenance costs of the Powerhouse and diversion facilities can be self generating. If PG&E chooses not to allow others to operate the Powerhouse and diversion, PG&E must continue to make provisions to allow a significant diversion of water through the facilities and to cover the costs to operate and maintain the diversion facilities.

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PG&E operates the Powerhouse using diversions from South Cow Creek. PG&E has a right for the non-consumptive use of water for hydropower generation, which was adjudicated in the Cow Creek Adjudication Decree. We understand these diversions began around 1904. Water is diverted several miles upstream of the Tetrick Ranch, is conveyed to the Powerhouse for hydropower generation, and is then released to Hooten Gulch on the Tetrick Ranch. The releases to Hooten Gulch are then discharged to the Abbott Ditch and back to South Cow Creek.

Tetrick Ranch and the Abbott Ditch water users (and their predecessors in interest) held water rights for consumptive use of water for diversion downstream of the diversion for the Powerhouse. The diversion point for the Tetrick Ranch is located upstream of the confluence of Hooten Gulch and the South Cow Creek. By designing water operations on the Tetrick Ranch to divert from Hooten Gulch rather than from South Cow Creek, the Tetrick Ranch helped PG&E to reap the profits gained through operation of the Powerhouse. Moreover, the profitable operation of the Powerhouse was also facilitated by providing title to the powerplant site and easements for associated facilities at a mere cost of \$5.00 in 1907.

After changing historic operations in order to benefit PG&E, facilities and water operations on Tetrick Ranch were developed in reliance on the releases from the Powerhouse to Hooten Gulch. Water for the cattle operation on the ranch is based on diversions from Hooten Gulch, and cattle are presently fenced off from South Cow Creek. Also, a small hydroelectric generation plant (which has generated about 30 to 110 kilowatts per hour since 1984) depends on the releases to Hooten Gulch. Terminating Powerhouse releases could require the development of a new diversion to support the cattle operation, resulting in additional costs. Also, terminating releases would also reduce the power generation of the Tetrick Ranch power plant, and will make its operation infeasible. In addition to reduced revenues from operations, this would also adversely impact the value of the Tetrick Ranch lands.

Since Tetrick Ranch facilitated the profitable production of hydropower at the Powerhouse, through such actions as providing land and easements on favorable terms for the Powerhouse placement and design of their own water-use facilities, it is not equitable for PG&E to now decommission these facilities in such a way that leaves the Tetrick Ranch with all the expenses of modifying their operations and facilities to adjust to the termination of discharges to Hooten Gulch. This is particularly true since Tetrick Ranch (and its predecessors) continuously performed their part of the bargain in detrimental reliance of those discharges continuing as they have for more than 100 years.

We propose that PG&E decommission the Powerhouse in a way that would maintain a significant level of discharges to Hooten Gulch. By discharging water to Hooten Gulch, Tetrick Ranch would be partially protected from PG&E changing the bargain and the unreasonable costs associated with those changes in operations. Also, appropriate discharges through the Powerhouse would allow for continued hydropower generation, which could be used

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to fund the future operation and maintenance of the diversion facilities. PG&E should consider alternatives to accomplish these goals, which would include:

- **Transfer of the South Cow Creek diversion, penstock, forebay and Powerhouse and associated diversion and conveyance facilities to Tetrick Ranch and water users who take delivery from the Abbott Ditch (which also diverts water from Hooten Gulch).**
- **Development of a new diversion at the high point on Tetrick Ranch which would be plumbed back to the Powerhouse. That would allow flow to continue to be used by the Abbott Ditch water users, and would continue to allow hydro production at both the Powerhouse and the Tetrick's hydro plant. The water would then flow back into South Cow Creek as before. This would help mitigate that economic loss to the Tetrick's hydro operation that will occur under the PG&E plan.**
- **Our proposed alternatives will also benefit PG&E by addressing some other significant issues related to decommissioning the Powerhouse. These issues include:**
 - **Riparian habitat has been developed along Hooten Gulch between the Powerhouse and South Cow Creek in response to more than 100 years of releases to Hooten Gulch. Numerous species, including species of special significance are present in that habitat. PG&E's preliminary plan to leave the species that we know exist "high and dry" for what appear to be limited fisheries benefits is not only ill conceived, it may be legally indefensible. Continuing to discharge to Hooten Gulch would tend to mitigate impacts to that habitat and the species that depend on it.**
 - **Water users along the Abbott Ditch have also diverted water from Hooten Gulch in reliance on the Powerhouse discharges. Those water users have a strong equity argument that they have a right to continued water use through the PG&E diversion based on the profits PG&E made off them. Continuing to discharge to Hooten Gulch would also help serve to mitigate impacts on the Abbott Ditch and relieve PG&E from a legal dispute over those rights.**
 - **The transfer of land and easements on the Tetrick Ranch was subject to the condition that they be used solely for "a power plant and for use in connection with the generation and transmission of electricity." If the Powerhouse were not used, then PG&E would be required to deed back to Tetrick Ranch the land, easements, and rights-of-way that were previously granted to PG&E's predecessor in interest. Maintaining use of the Powerhouse could avoid costs related to removal of those facilities as part of the decommissioning.**

I look forward to the opportunity to discussing these issues with you once you have had a chance to review this letter. I believe the amicable resolution of these issues will best

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serve the interests of both Tetrick Ranch and PG&E. We look forward to meeting with you before the end of September to discuss the alternatives presented here.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

Scott A. Morris/djk

Scott A. Morris

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cc: Mr. Richard Moss
Mr. Andrew J. Black, FERC