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September 26, 2007

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N. W.
Washington, DC 20426

RE: Kilarc-Cow Creek Hydroelectric Project, FERC Project No. 606

Dear Secretary Bose:

Pacific Gas and Electric Company ("PG&E"), Licensee for the Kilarc-Cow Creek Hydroelectric Project, FERC Project No. 606 ("Project"), provides the following comments on the letter submitted to the Federal Energy Regulatory Commission ("FERC") on September 17, 2007 by representatives of Davis Hydro, LLC ("Davis"). In its letter, Davis requests certain guidance and actions from FERC relating to PG&E's proposed decommissioning of the Project.

As PG&E understands it, Davis' September 17, 2007 letter requests that FERC (1) clarify whether it will consider a decommissioning plan from PG&E that incorporates as an element continued operation of the Project, or a portion of the Project, for power generation; and (2) require PG&E to undertake studies, presumably at PG&E's expense, geared towards evaluating whether continued operation of the Project is preferable to PG&E's decommissioning proposal.

As FERC is aware, PG&E did not apply for a new license for the Project and is currently preparing a License Surrender Application, including a decommissioning plan, to be filed with FERC by March 26, 2009. After PG&E files its License Surrender Application, FERC will perform an Environmental Assessment pursuant to the National Environmental Policy Act. It is PG&E's understanding that the Environmental Assessment will evaluate a range of alternatives for decommissioning the Project facilities, but not alternatives that consider continued generation at the Project. This is appropriate given that the Federal Power Act and FERC's regulations preclude PG&E from being the future licensee for the Project since it did not apply for a new license by the statutory deadline.

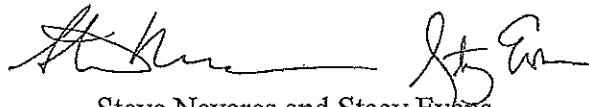
Similarly, PG&E does not believe that its customers should be asked to fund studies associated with Davis' proposed alternative for continued generation at the Project since PG&E would not be the future licensee. Nevertheless, PG&E could support

The Honorable Kimberly D. Bose, Secretary
September 26, 2007
Page 2

Davis' performing studies it feels are necessary for its alternative to continue operating the Project as a generation facility, as long as FERC and signatories to the Project Agreement support the alternative and Davis funds those studies.

PG&E provides FERC with further context for Davis' letter, as well as a more detailed response to Davis' requests, in an attachment to this letter.

Very truly yours,

Handwritten signatures of Steve Nevares and Stacy Eyans.

Steve Nevares and Stacy Eyans
Kilarc-Cow Creek Co-Project Manager

Enclosure

cc: Mr. Robert Fletcher,
Federal Energy Regulatory Commission

FERC Project No. 606 Service List

**ADDITIONAL COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
ON SEPTEMBER 17, 2007 LETTER FROM DAVIS HYDRO, LLC TO FEDERAL
ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company ("PG&E"), the Licensee for the Kilarc-Cow Creek Hydroelectric Project, FERC Project No. 606 ("Project"), provides the following additional comments on the letter submitted to the Commission on September 17, 2007 by representatives of Davis Hydro, LLC ("Davis"). In its letter, Davis requests certain guidance and action from the Commission relating to PG&E's proposed decommissioning of the Project. PG&E wishes to provide the Commission with context for Davis' letter, as well as to give its reaction to Davis' requests.

BACKGROUND

As the Commission is aware, PG&E is currently in the process of preparing a License Surrender Application, including a decommissioning plan, for the Project. PG&E initially sought a new license for the Project, filing a Notice of Intent ("NOI") to relicense the Project in 2002. However, after performing initial relicensing studies and consulting with resource agencies and other interested parties, PG&E ultimately concluded that the likely cost of providing the necessary level of protection, mitigation and enhancement for the resources affected by the Project would outweigh the economic benefit of generation at the Project over the life of a new license. Consequently, in March 2005, PG&E entered into the Kilarc-Cow Creek Project Agreement ("Project Agreement") with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, California Department of Fish and Game, California State Water Resources Control Board, Trout Unlimited, and Friends of the River. Pursuant to the Project Agreement, PG&E, among other things, agreed not to file an application for a new license by the statutory deadline of March 27, 2005, and instead to support decommissioning of the Project. PG&E honored that commitment and the statutory deadline for filing an application for a new license passed.

Once the deadline passed for PG&E to file an application for new license, the Commission, pursuant to its "orphan" regulations, issued a public notice on April 7, 2005, inviting other entities to file NOIs to seek a new license for the Project. One entity did so: Synergics Energy Development, Inc. (Synergics) filed a NOI on June 7, 2005. Synergics, however, failed to file an application for new license by the December 27, 2006 deadline established by the Commission and the Commission denied Synergics' request to extend the deadline. After Synergics failed to timely file an application for new license, PG&E, as directed by the Commission, began the process of preparing a License Surrender Application for the Project. On March 23, 2007, PG&E filed a proposed schedule for filing a License Surrender Application.

On April 27, 2007, Davis filed a NOI to seek a new license for the Project, notwithstanding that under the Commission's regulations, a potential applicant wishing to

file a NOI under the orphan process is required to do so within 90 days of the Commission soliciting applications, or, in this case, by July 7, 2005. 18 C.F.R. § 16.25(b). The Commission denied Davis' NOI on May 31, 2007, ruling that Davis' filing, nearly two years after the deadline for filing a NOI, was not permitted under the Commission's regulations.

The Commission approved PG&E's proposed decommissioning schedule on June 11, 2007. Pursuant to the approved schedule, PG&E is required to file a License Surrender Application, including a decommissioning plan, by March 26, 2009. PG&E began the process of preparing its License Surrender Application by holding a public meeting in the vicinity of the Project in Whitmore, CA on March 29, 2007. PG&E followed the initial public meeting with additional public meetings on May 15 and 16, 2007. PG&E placed notices for the meetings in local newspapers and sent letters to Project stakeholders. During the meetings, PG&E solicited comments from the stakeholders to assist it in identifying issues with Project decommissioning. PG&E also hosted a public tour of the Project on June 13 and 14, 2007.

PG&E incorporated the comments received from stakeholders in developing a Preliminary Proposed Decommissioning Plan ("PPDP"). The PPDP also relied on the Project Agreement and resource data generated prior to PG&E's decision not to relicense the Project. PG&E presented the PPDP at public meetings on September 12 and 13, 2007, in Palo Cedro and Redding, respectively. The PPDP sets out PG&E's initial concept for decommissioning the Project with specific proposals for each Project facility ranging from complete removal of facilities (e.g., certain diversion structures) to abandonment in place (e.g., powerhouses). PG&E is currently soliciting public comment on the PPDP and expects to revise it accordingly. PG&E intends to hold more public meetings in November, 2007 to discuss any comments received. PG&E will include a final decommissioning plan in its License Surrender Application to be filed in March, 2009. The final decommissioning plan will incorporate the results of studies PG&E will undertake prior to March, 2009.

DAVIS' SEPTEMBER 17, 2007 LETTER

As PG&E understands it, Davis' September 17, 2007 letter requests that the Commission (1) clarify whether it will entertain a decommissioning plan from PG&E that incorporates as an element continued operation of the Project, or a portion of the Project, for power generation; and (2) require PG&E to undertake studies, presumably at PG&E's expense, geared towards evaluating whether continued operation of the Project (specifically, continued operation as set forth in Davis' September 11, 2007 proposal) is preferable to PG&E's decommissioning proposal. Davis' September 11, 2007 submission, entitled "An Alternative Proposal to Facilities Removal, Kilarc-South Cow Hydropower Project," ("Alternative Proposal") proposes holding the decommissioning process in abeyance for five years while Davis performs a suite of studies designed to validate the "basic premise" of the Alternative Proposal: that Davis "can study and enact more effective measures for the fish using the Kilarc facilities than by removing them." Alternative Proposal, p. 11. If after five years Davis' "basic premise" is proven correct to

the satisfaction of the resource agencies, then Davis would become the licensee for the Project. Alternative Proposal, p. 8. Otherwise, the Project would be decommissioned. Id.

Assuming Davis' Alternative Proposal is properly before the Commission¹, PG&E does not believe that it is its responsibility, nor that of its customers, to fund the studies Davis deems necessary to support the Alternative Proposal. The Commission's regulations provide that if Davis had timely filed a NOI in 2005, it would have been Davis' responsibility to propose and fund studies in support of its license application. The Commission's orphan regulations provide that a potential applicant that timely files a NOI must comply with the consultation requirements set forth in 18 C.F.R. § 16.8. See 18 C.F.R. § 16.25 (b)(2). Section 16.8(c), in turn, provides that a potential applicant "must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by resource agencies and Indian tribes." Thus, had Davis complied with the orphan regulations, it, and not PG&E, would have had to fund whatever studies it thought necessary to support its application. PG&E would only need to have provided reasonable access to the Project for Davis to conduct its studies. See 18 C.F.R. § 16.5(a). PG&E does not believe it is appropriate for Davis to request that PG&E fund the very same studies that Davis would have been required to fund had it complied with the orphan regulations. Moreover, it is inappropriate to ask PG&E's customers to fund studies for the benefit of a potential future licensee when PG&E cannot be that future licensee.²

In addition, and contrary to Davis' assertion, PG&E does not believe that the suite of studies requested by Davis are necessary for the Commission to evaluate the "no action" alternative under NEPA, 40 C.F.R. § 1502.14(d). PG&E intends to provide the Commission with sufficient information regarding Project effects for the Commission to evaluate baseline conditions. It would be particularly inappropriate here to require costly studies to augment baseline information since "a licensee is free to surrender its license and cease project operations." Arizona Public Service Company, 109 FERC ¶ 61,036 (2004), ¶ 39. Requiring a licensee to perform costly studies to demonstrate the baseline impacts of a Project it wishes to relinquish makes little sense.

In any event, Davis' Alternative Proposal is not a "no action" alternative. The Commission has previously discussed the scope of the "no action" alternative in the context of decommissioning, stating that "[u]nder the no-action alternative, the project would continue to operate under the terms and conditions of the existing license, and no

¹ Taken together, Davis' Alternative Proposal and its September 17th letter seek to revive the possibility of Davis becoming the licensee for the Project, or of some portion thereof. It is PG&E's understanding that the opportunity for others to relicense the Project has passed. PG&E notes that the Alternative Proposal, if accepted by the Commission, would appear to allow Davis to circumvent the Commission's rejection of its NOI.

² As the Commission is aware, by declining to file an application for new license at least 24 months before the expiration of the term of its prior license, PG&E is now precluded from being a future licensee of the Project. 16 U.S.C. § 808(c)(1).

new environmental protection, mitigation, or enhancement measures would be implemented.” Final Environmental Assessment for Surrender of License, Childs Irving Project, FERC Project No. 2069-007 (March 2004) at p. 6. Because Davis’ Alternative Proposal contemplates operation of the Project not under current license conditions but with additional protection, mitigation, and/or enhancement measures, it is not properly conceived of as a “no action” alternative to decommissioning.³ Thus, contrary to Davis’ assertion, its study requests do not support a “no action” alternative.

To be clear, PG&E has no objection to Davis performing, at its own expense, whatever studies Davis believes are necessary to support its Alternative Proposal. PG&E would be pleased to provide Davis reasonable access to the Project for such purposes. Nor is PG&E necessarily opposed to Davis’ Alternative Proposal (notwithstanding its apparent procedural infirmities) so long as the other signatories to the Project Agreement support it. As Davis acknowledges in its Alternative Proposal, it is the resource agencies that ultimately determine “what is best for the project” in terms of operational conditions. Alternative Proposal at p. 8.⁴ If Davis were able to garner support for its Alternative Proposal from the decommissioning stakeholders, including the resource agencies, PG&E would support it as well. Indeed, PG&E intends to explore whether any governmental agencies may have an interest in assuming responsibility for Kilarc Forebay and continuing to operate it as a recreational asset for the Whitmore community.

Nevertheless, PG&E believes strongly that it would be inappropriate for the Commission to require PG&E to undertake the studies requested by Davis in its September 17, 2007 letter and asks for Commission concurrence with this belief.

³ Davis’ Alternative Proposal expressly contemplates “demonstrat[ing] supplemental remediation measures for the whole Old and South Cow Creek areas over a 5-year study period.” Alternative Proposal at p. 7. In addition, Davis’ September 17 letter notes that it wishes to study the effects of “leaving the South Cow Powerhouse in place and operating at a reduced flow and perhaps head.” September 17, 2007 letter at p. 4.

⁴ The Commission also recognizes the resource agencies’ vital role in determining the viability of a proposed decommissioning alternative, particularly where the licensee and the resource agencies have signed a settlement agreement. For example, in FPL Energy Maine Hydro, LLC, 106 FERC ¶ 61,038 (2004), the Commission concluded that it could not consider a proposed alternative to dam removal and the resulting loss of a valued recreational resource given that the licensee was “constrained” by a decommissioning agreement with various stakeholders, including resource agencies, that did not allow for the proposed alternative. Id. at ¶ 31. Because the signatories to the agreement failed to consent to the alternative, the Commission concluded that “the alternatives open to us are limited.” Id. at ¶ 32. See also Utahns for Better Transp. v. U.S. Dept. of Transp., 305 F.3d 1152, 1172 (10th Cir. 2002), *modified by*, 319 F.3d 1207 (2003)(agency need not evaluate proposed alternative under NEPA where “a number of local and regional governmental entities whose cooperation would be necessary to make [the] alternative . . . a reality” failed to support the alternative).