

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

| Project No. 606-027

**RESPONSE OF TETRICK RANCH
TO COMMENTS OF
CALIFORNIA DEPARTMENT OF FISH AND GAME**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, Tetrick Ranch responds to the Comments filed with the Commission on December 15, 2009, by the California Department of Fish and Game ("CDFG") with respect to the public Scoping Meetings held in connection with Pacific Gas and Electric Company's ("PG&E") proposed License Surrender and Decommissioning Plan for the Kilarc-Cow Creek Project, FERC No. 606.

I. CDFG AND THE OTHER RESOURCE AGENCIES SHOULD BE DIRECTED TO DISCLOSE AND JUSTIFY THE INCREASED MINIMUM FLOW CONDITIONS THAT THEY WOULD HAVE DEMANDED UNDER A NEW LICENSE FOR THE KILARC-COW CREEK PROJECT

In its December 15 Comments ("CDFG Comments"), CDFG states that "PG&E would have likely had increased minimum instream flow (MIF) requirements under a new license" and that those "requirements" "were part of PG&E's determination that decommissioning was a viable and cost effective alternative to relicensing." CDFG Comments at 2. CDFG also asserts that an economic analysis should be prepared "to demonstrate how either Alternative [to the proposed decommissioning] would be self sustaining under increased flow conditions." *Id.*

Tetrick Ranch agrees with CDFG (and FERC Staff) that such an analysis not only could be helpful, but in fact is crucial.¹ Currently, however, it is impossible for anyone to prepare such an economic analysis, because neither PG&E nor the resource agencies have ever disclosed either: (1) the minimum instream flow requirements that would be demanded by the resource agencies under a new Kilarc-Cow Creek license; or (2) the scientific justification for such minimum flows. To the contrary, PG&E's December 23 Additional Information Response² ("PG&E AIR Response") states that after two years of consultation, "the resource agencies had not yet proposed specific protection, mitigation, and enhancement measures for inclusion in a new license." PG&E AIR Response at 6-7. CDFG's December 15 Comments likewise assert that minimum flows would "likely" have increased, but do not identify any specific level or timing for such minimum flows. Without this information, any economic "analysis" is pure speculation.

At a minimum, CDFG and the other resource agencies should be directed to provide information, as requested of PG&E by FERC Staff, on the specific minimum instream flows that they would have demanded under a new license for the Kilarc-Cow Creek Project, along with a detailed explanation of the justification for those flows and a quantification of the fishery benefits expected from any increase, including references to prior studies and field work. The Commission itself is responsible for setting the minimum flows for licensed hydroelectric projects. Without this information, the

¹ This is also illustrated by the Comments of National Marine Fisheries Service ("NMFS"), dated November 4, 2009, in which the NMFS Northern California Habitat Supervisor flatly asserts that "Tetrick Ranch does not provide analysis or evidence that their proposed alternative would generate surplus revenues to fund the other habitat improvements, as suggested." Letter to Kimberly D. Bose from Steve Edmondson in FERC Project No. 606, *available at* eLibrary Accession No. 20091109-5059.

² PG&E Response to FERC Additional Information Request in Letter dated November 13, 2009, filed December 23, 2009, in FERC Project No. 606, *available at* eLibrary Accession No. 20091223-5141.

Commission Staff simply cannot properly evaluate the impacts of the proposed license surrender and decommissioning versus the alternatives to PG&E's proposal³—including, for example, weighing any claimed benefits from increased instream flow demanded by the resource agencies against the costs to the local community and the cost of destroying the existing or potentially enhanced habitat at Hooten Gulch and the Abbott Ditch—as required by the Federal Power Act and the National Environmental Protection Act, and as would clearly be consistent with and promote current federal and state policies favoring renewable resources and just plain common sense.

II. CDFG SHOULD BE REQUIRED TO PROVIDE THE COMMISSION WITH THE ANALYSIS AND DATA SUPPORTING ITS BELIEF THAT DECOMMISSIONING WILL BENEFIT STEELHEAD AND STEELHEAD HABITAT, OR SUPPLY THE REASONS UNDERLYING ITS DECISION TO ENTER INTO THE 2005 PROJECT AGREEMENT AND SUPPORT THE DECOMMISSIONING PROPOSAL

CDFG states that it “believe[s] when the natural hydrograph is returned to South Cow Creek, there will be exceptional habitat for steelhead migration, spawning, and rearing throughout the reach.” CDFG Comments at 3. That assertion, however, appears to be based on a single visit, when CDFG and NMFS staff “walked approximately one and a half miles of the lower South Cow Creek” during fall 2009. *Id.* CDFG has provided no analysis or evidence to support its assertions regarding the changed flows that would result from the decommissioning. Particularly in light of Attachment B of the

³ PG&E seems to have made a business decision to file for surrender and decommissioning, but neither the Commission nor the public has been informed as to the reasons and underlying analysis for PG&E's decision, as PG&E claims that information is proprietary. PG&E AIR Response at 7. Tetric Ranch does not quarrel with PG&E's corporate decision at this time. It only notes that there is nothing in that decision per se to support its validity from a scientific basis, versus PG&E's corporate business perspective, or to illuminate those factors that the Commission must take into account in making its public interest determination.

PG&E AIR Response, which shows both very low natural flows during the summer months in many years and very high winter flows in most years, it is unclear that the “natural hydrograph” will produce steelhead habitat that is significantly different from existing conditions. CDFG should be directed to quantify the specific anticipated changes in the affected reaches and publicly explain how and why they would represent “exceptional habitat” for steelhead.

Given its apparent focus primarily, if not exclusively,⁴ on benefits to steelhead, CDFG should also be required to provide a detailed explanation of: (1) how the expected changes to the bypass reach of South Cow Creek above its confluence with Hooten Gulch will alter the total amount and variety of habitat currently in South Cow Creek; (2) how the changed conditions CDFG asserts will be created by the proposed decommissioning in that stretch of South Cow Creek will produce steelhead by increasing anadromy within the existing rainbow trout population of South Cow Creek, including an explanation for why existing habitat has failed to do so; and (3) the likelihood that any anadromous rainbow trout that migrate to the ocean from South Cow Creek—*i.e.*, steelhead—would successfully return to spawn, as any such steelhead must survive two passages through the seriously compromised San Francisco Bay Estuary and Delta. Each of these explanations should clearly state the assumptions that CDFG has made with respect to the quantity and location of water withdrawals by the Abbot Ditch Users (“ADUs”), Tetrick Ranch, and others with existing consumptive water rights on South Cow Creek.

⁴ CDFG’s Comments do not address the impacts on flora and fauna at Hooten Gulch, a continuously watered habitat that has existed for over a century. FERC Staff might wish to seek additional comments from CDFG in this regard, or conclude that the omission reflects CDFG’s position that, notwithstanding the Commission’s obligation to consider alternatives to satisfy its NEPA and FPA obligations, CDFG will not assist in that effort because CDFG is absolutely committed to decommissioning and will not consider any alternatives.

Without this basic information, it is impossible for the Commission to assess the environmental and ecosystem benefits of the proposed License Surrender and Decommissioning Plan, or to conclude that those benefits are sufficient to counterbalance the very heavy socioeconomic costs of removing the Project, as well as the destruction of existing century-old ecosystems in Hooten Gulch and the Abbott Ditch.

The CDFG Comments also fail to address critical timing issues. The PG&E AIR Response indicates that decommissioning might occur sometime between 2010 and 2013. PG&E AIR Response at 9. The CDFG Comments, however, acknowledge that additional steps will be needed to preserve the existing water rights of the ADUs, and now state that CDFG looks forward to the permitting and construction of an alternative water diversion site for the ADUs. CDFG Comments at 3. The Commission Staff has stated that it anticipates the release of a Draft Environmental Assessment in January 2010.⁵ This suggests that a Commission decision on the *merits* of the PG&E proposal is expected then or soon thereafter.

Any decision on PG&E's proposed License Surrender and Decommissioning Plan will have significant economic consequences to the community and to the business interests involved in this community. Yet it is not clear when, if ever, the claimed benefits of any decommissioning would be realized. CDFG's latest recommendation—*i.e.*, that the ADUs relocate their existing water supply diversion⁶—appears to contemplate that no decommissioning would occur until after an alternative diversion for

⁵ Scoping Document, issued September 16, 2009 in Project No. 606, at 14, *available at* eLibrary Accession No. 20090916-3009.

⁶ CDFG Comments at 3. CDFG's reference to a "historic diversion" point is erroneous. The ADUs have always been primarily served by the tailrace of the South Cow Creek power plant from the ADUs' diversion at Hooten Gulch.

the ADUs has been sited, designed, permitted, and constructed. That process might take three years or ten years or much longer; indeed, it is unclear whether such a diversion would ever be allowed or, even if allowed, whether it would be economically feasible for the Abbott Ditch Users. Even assuming for the sake of argument that such an alternative diversion can be sited and constructed, how long does CDFG expect it will take to see the alleged increase in steelhead population? CDFG should be required to be more specific about both the schedule it envisions and the likely realistic timing of any alleged benefits, as this information may be useful to Commission Staff as it assesses the impacts of PG&E's proposal and alternatives to that proposal.

Additionally and separately, CDFG surely had its reasons in 2005, at a time when it had not yet even "walked" the most affected segments of South Cow Creek, for entering into the Project Agreement with PG&E to support decommissioning of the Project. That 2005 CDFG agreement, moreover, led to a sequence of administrative decisions that place the community at risk for the loss of the Kilarc-Cow Creek Project facilities. It would be helpful to know what technical, scientific, or other reasons underlay the CDFG decisions surrounding the 2005 Project Agreement; that response may well assist FERC in its balancing of the evidence and consideration of possibly competing factors in deciding how its own responsibilities need to be administered, including its consideration of all reasonable alternatives.⁷

⁷ In this regard, Staff made plain that in the absence of adequate information, it would have to use the best information available. The agencies' and PG&E's unwillingness and/or inability to date to provide specific, substantive information in response to Staff's inquiries raises serious questions about what evidence Staff can rely on. *See, e.g.*, PG&E AIR Response at 2 (stating that its gage in the South Cow Creek Main Canal has been out of service since 1996), 6 & n.6 (stating that "high-cost" instream flows were discussed with the resource agencies, but that no specific mitigations had been proposed by the agencies after two years of consultation), 7 (refusing to provide PG&E's analysis of likely mitigation measures, costs, and impacts on the grounds that the information is proprietary); Reply of U.S. Fish and

Finally, CDFG commented on the response of some members of the community to the CDFG's seeming lack of preparedness for or disinterest in the Scoping Meeting. CDFG Comments at 1. Speaking for at least some segment of the local community, Tetrick Ranch meant no disrespect to the Department. To the contrary, we experienced deep disappointment when the CDFG representative present appeared to be unable to explain or document the environmental benefits claimed for the decommissioning and could not participate in meaningful discussion of reasonable alternatives to PG&E's proposal, including retaining the Kilarc-Cow Creek facilities. Surely, the Department was aware of the community's efforts to retain the facilities because of the adverse impacts of losing them. The community's desire to know more about the reasons why the community should be asked to sacrifice the benefits of the Project when decommissioning seemed so unnecessary was both justified and foreseeable. The community looked forward to a chance to exchange their views on the topic with those in a position to make decisions, as well as with those who had already made their decisions. It seems reasonable for the public to be informed as to the basis for those decisions in a publicly noticed forum, and the community should not have to apologize for exercising the right to ask questions and get straight answers.

CONCLUSION

For the reasons discussed above, Tetrick Ranch requests that the Commission ask CDFG and the other resource agencies to assist the Commission Staff and the public record by stating: (1) what minimum flows they would demand in any new license for

Wildlife Service ("USFWS") to FERC's November 16, 2009 Letter, filed December 14, 2009, at 1, *available at* eLibrary Accession No. 20091215-5010 (stating, in response to the Commission's request for USFWS's data on Hooten Gulch, that "[t]he Service has not collected data on Hooten Gulch.").

the Kilarc-Cow Creek Project, and explain their assumptions and reasoning regarding their decision to sign the 2005 Project Agreement; (2) whether and the extent to which decommissioning the Kilarc-Cow Creek Project would improve and expand existing steelhead habitat; (3) their projection of the timing of such improvements; (4) whether and when the local steelhead population might increase in response to such habitat improvements; and (5) the criteria for a new water diversion that would be sited, designed, permitted, and constructed to protect existing water rights.

Respectfully submitted,

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December 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 30th day of December, 2009.

/s/ Rebecca J. Baldwin

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