

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company | Project No. 606-027

**MOTION TO INTERVENE OUT-OF-TIME
OF EVERGREEN SHASTA POWER, LLC**

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, Evergreen Shasta Power, LLC, moves to intervene out-of-time in order to protect its interests in the above-captioned proceeding.

I. EVERGREEN SHASTA POWER AND ITS INTERESTS

Evergreen Shasta Power, LLC ("Evergreen Shasta"), is an entity incorporated under the laws of the State of Nevada for the purpose of acquiring and operating the Kilarc-Cow Creek Hydroelectric Project, FERC Project No. 606. Members of Evergreen Shasta include individuals associated with Tetrick Ranch and Sierra Pacific Industries, Inc., which together have the ownership and operational experience necessary to acquire, maintain, operate, and improve the Kilarc-Cow Creek Hydroelectric Project facilities; and are fully prepared to do so.

To that end, Evergreen Shasta has collaborated with other parties to this proceeding to develop an Offer of Settlement – filed with the Commission today – that presents to the Commission a viable and superior alternative to the license surrender and decommissioning proposed by Pacific Gas and Electric Company ("PG&E"), the current Project No. 606 licensee. Under the provisions of the Offer of Settlement, the Commission would issue an Order allowing PG&E to surrender its Project No. 606 license, provided the Kilarc and Cow Creek Developments were allowed to continue to operate. This could be accomplished if PG&E were to agree to sell the existing Kilarc-

Cow Creek Project facilities and property to Evergreen Shasta, thus enabling Evergreen Shasta, at its own expense, to apply for exemptions from the Commission to operate the two Project developments, one for the Kilarc development and one for the Cow Creek development. Thus, PG&E would achieve its objective of surrender of its license, and the community and Evergreen Shasta would be in a position to maintain the existing Project No. 606 operations, albeit in an improved manner. If such a process were approved by the Commission, many adverse impacts would be avoided, not the least of which are the loss of 5 MW of renewable resources, the loss of a major community recreation resource, and the expenditure of \$14.5 million in decommissioning implementation costs to be borne by PG&E's ratepayers. To assure adequate disclosure of information and to allow all the parties and the Commission to evaluate the Offer of Settlement, the proponents of the Offer have also requested the initiation of settlement proceedings to address all of these long-standing issues and impacts promptly.

Given this, Evergreen Shasta's interest in these proceedings is evident. It is deeply interested in advocating and achieving a prompt resolution of a dispute that has troubled and disrupted its community and might otherwise be unresolved, perhaps for decades. Indeed, because of the water rights issues that remain unresolved under PG&E's Proposed Decommissioning Plan, it is possible that implementation could be delayed indefinitely, even if the Commission were to grant PG&E its requested license surrender and decommissioning.

II. GOOD CAUSE TO PERMIT LATE INTERVENTION IS PRESENT

Rule 214(b)(3) states that motions to intervene out of time must "show good cause why the time limitation should be waived." 18 C.F.R. § 385.214(b)(3). The

Commission may then consider whether, in addition to meeting the normal standards for intervention,

- (i) The movant had good cause for failing to file the motion within the time prescribed;
- (ii) Any disruption of the proceeding might result from permitting intervention;
- (iii) The movant's interest is not adequately represented by other parties in the proceeding;
- (iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention

18 C.F.R. § 385.214(d)(1). Each of these factors weighs in favor of permitting Evergreen Shasta's out-of-time intervention.

The proposal contained in the Offer of Settlement, in which Evergreen Shasta plays a crucial role, was not developed until very recently and was finalized only at the time of this Motion. It evolved in response to the events in the proceeding since the Commission issued its public notice of the PG&E License Surrender Application in May 2009. It was not practical for Evergreen Shasta to intervene at an earlier date before it had defined its role and how it could assist in the resolution of these proceedings. Now, however, Evergreen Shasta has a key interest in the outcome of these proceedings that no other party can adequately represent because Evergreen Shasta is proposing to purchase and to continue to operate the Project facilities, a unique role. As explained below, permitting Evergreen Shasta to intervene at this stage will not disrupt the proceedings in any way or prejudice any party; this Motion to Intervene is being filed concurrently with the Offer of Settlement, to which the existing parties will have the full defined period to respond.

The Commission summarily grants out-of-time interventions in cases that will not disrupt the proceedings or place additional burdens on existing parties on a regular basis. *See NGO Transmission, Inc.*, Docket No. RP10-235-000 (Jan. 4, 2010), *available at* eLibrary Accession No. 20100104-3010; *MarkWest Pioneer, L.L.C.*, Docket No. RP10-199-000, 129 F.E.R.C. ¶ 61,290 (Dec. 30, 2009); *Duke Energy Carolinas, LLC*, Docket No. ER10-130-000 (Dec. 17, 2009), *available at* eLibrary Accession No. 20091217-3080). Evergreen Shasta's Motion to Intervene falls squarely into this category. Because the Offer of Settlement, as well as an accompanying Motion seeking settlement proceedings, are being filed concurrently with this Motion, and because Evergreen Shasta's role in this phase of the proceeding is tied to the role it proposes to assume in the Offer of Settlement and settlement proceedings if ordered by the Commission, it would have been premature had it sought to intervene at an earlier date. Granting Evergreen Shasta's motion to intervene at this time should not place any additional burdens on parties whose obligations will be to respond to the Offer of Settlement, which is supported by other parties to this proceeding, in any event. Evergreen Shasta's involvement in the proceedings is in the public interest and will promote a resolution, as Evergreen Shasta will be able to provide additional information and respond to the other parties and Commission Staff as they attempt to reach the best possible resolution of the many issues at stake in this proceeding.

III. COMMUNICATIONS

The persons to whom communications concerning this matter should be addressed, and their contact information, are as follows:

Steven P. Tetrick
Evergreen Shasta Power, LLC
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IV. CONCLUSION

For the foregoing reasons, Evergreen Shasta requests that the Commission grant it intervention out of time, with full rights as a party.

Respectfully submitted,

/s/ Steven P. Tetrick

Steven P. Tetrick
for Evergreen Shasta Power, LLC

January 22, 2010

CERTIFICATE OF SERVICE

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

Dated on this 22nd day of January, 2010.

/s/ Steven P. Tetrick

Steven P. Tetrick

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