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January 22, 2010

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Pacific Gas and Electric Company,  
Project No. 606-027 (Kilarc-Cow Creek)**

Dear Ms. Bose:

Attached is a filing consisting of an Offer of Settlement and an Explanatory Statement to the Offer of Settlement being submitted on behalf of Tetrick Ranch, the Abbott Ditch Users (“ADUs”), Shasta County, Sierra Pacific Industries, Inc., and Evergreen Shasta Power, LLC (“Settling Parties”), in the above-captioned proceeding. Tetrick Ranch, the Abbott Ditch Users, and Shasta County are unopposed intervenors in this proceeding. Evergreen Shasta Power, LLC, and Sierra Pacific Industries, Inc., are submitting late-filed Motions to Intervene as of this date.

In addition, Tetrick Ranch, supported by all the Settling Parties, is also filing today a Motion requesting the Commission to initiate Settlement proceedings. It is the opinion of the Settling Parties that an alternative, viable resolution to this decommissioning proceeding, a process that has been utterly disruptive to their community, is possible, as proposed in the accompanying Offer of Settlement. Absent a supervised occasion to negotiate, however, a resolution will not be possible within the necessary time frame, particularly given the apparently deeply-entrenched position of some of the participants that the only action that this Commission can authorize is the decommissioning and removal of the Project No. 606 facilities without regard to its impacts on the community and non-power interests.

The Settling Parties are hopeful that Commission-supervised settlement discussions that include a review of all available evidence will—unlike the Commission Staff’s recent public meetings where the public was unable, in certain instances, to obtain responses to their substantive questions, including questions about alternatives to decommissioning—result in productive discussion of the merits of the proposed decommissioning and its alternatives. Staff has indicated a desire to issue a Draft Environmental Assessment (“DEA”) on the PG&E License Surrender Application and Proposed Decommissioning Plan sometime this month or next. The parties to the Settlement Offer suggest that the DEA be deferred until after a settlement

Kimberly D. Bose

Page 2

proceeding and the receipt of complete answers to the questions posed by the Commission Staff to PG&E, the resource agencies, and others in November 2009.

Tetrick Ranch acknowledges that approval of the Offer of Settlement would likely require the grant of waivers from certain Commission regulations. In attempting to develop a clear, comprehensive, and complete resolution in this complicated but important matter, the Settling Parties have attempted to set out as completely as they can a clear and logical roadmap for accomplishing a smooth transition of the Kilarc-Cow Creek Project and operations. Strict application of certain Commission regulations, in particular Sections 4.31 and 4.33, 18 C.F.R. §§ 4.31 and 4.33, would appear to preclude some of the necessary steps outlined, unless waived. Since waiving these regulations would neither frustrate the intended purpose of these regulations nor prejudice any party and because it would instead further the resolution of this matter consistent with the Federal Power Act, the Settling Parties provided the best plan they could to the Commission, consistent with the exercise of the Commission's discretionary authority to grant any necessary waivers. *Am. Farm Lines v. BlackBall Freight Serv.*, 397 U.S. 532, 539 (1970). The critical element is that the grant of such waivers would limit the uncertainty that necessarily accompanies a multi-step process, and that certainty is beneficial and essential for all the participants to this proceeding, as well as for the Commission.

This Offer of Settlement and the other filings made this day in connection with this matter are being served on all parties on the Commission's Official Service List, including all affected resource agencies, pursuant to Rule 602(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(d). In compliance with Rule 602(d)(2), undersigned Counsel also note that Comments on the Offer of Settlement may be filed by any Participant not later than 20 days after the filing, or by February 11, 2010, and reply comments may be filed not later than 30 days after the filing, or February 22, 2010, unless otherwise provided by the Commission. The Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(3), also provide that any failure to file a comment constitutes a waiver of all objections to the offer of settlement.

Respectfully submitted,

/s/ *Frances E. Francis*

Frances E. Francis  
William S. Huang  
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Attorneys for Tetrick Ranch

Attachments

cc: All Parties on FERC Official Service List  
Attached List

Additional Interested Parties Served:

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## **EXPLANATORY STATEMENT**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

| Project No. 606-027

**EXPLANATORY STATEMENT TO  
OFFER OF SETTLEMENT OF TETRICK RANCH,  
ABBOTT DITCH USERS,  
SIERRA PACIFIC INDUSTRIES, INC.,  
SHASTA COUNTY, AND  
EVERGREEN SHASTA POWER, LLC**

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, Tetrick Ranch, the Abbott Ditch Users (the "ADUs"), Sierra Pacific Industries, Inc. ("Sierra Pacific"), Shasta County, and Evergreen Shasta Power, LLC ("Evergreen Shasta") (collectively, the "Settling Parties"), submit this Explanatory Statement concerning the attached Offer of Settlement of all issues. This Offer of Settlement is consistent with Commission and Federal Power Act policies and procedures and manifestly serves the public interest.

If approved by the Commission, the Offer of Settlement resolves the principal issue before the Commission in this docket, namely, whether to approve: (1) the surrender of the Project No. 606 license as requested by PG&E, and (2) PG&E's Proposed Decommissioning Plan. Specifically, the Offer of Settlement provides the means for PG&E to surrender the Project No. 606 license without incurring the costs and risks of its Proposed Decommissioning Plan; and it assures the continuity of hydropower production, Commission jurisdiction, water delivery services to sustain the livelihood of farm owners long engaged in local agricultural operations, public recreation and aesthetics associated with Kilarc Lake, the availability of Kilarc Lake for firefighting

purposes, the continuation of a long-standing ecosystem along Hooten Gulch and the Abbott Ditch, and the stability of tax revenues from the continued Project operations for Shasta County.

**A. Background**

The 5 MW Kilarc-Cow Creek Hydroelectric Project is located in Shasta County, California, and consists of two developments: (1) the Kilarc Development on Old Cow Creek; and (2) the Cow Creek Development on South Cow Creek.

The project has been in place since 1907, and has become integrated into the local environment and economy in a number of important ways. First, Kilarc Lake, the forebay of the Kilarc development, is a popular recreational asset for the local community. Today, the site is available to day picnickers and regularly stocked with rainbow trout. *See, e.g.,* Comments of the “Save Kilarc” Committee at 2-3 (dated Aug. 13, 2008).<sup>1</sup> Several generations of local residents have learned to fish at Kilarc Lake. The Lake also provides a site for fishing and other recreational pastimes accessible to the disabled, a rare feature in the area. Kilarc Lake also serves as a source of water for firefighting, and may well provide groundwater recharging to the many residences down gradient.

The Cow Creek Development diverts water from South Cow Creek to the Cow Creek powerhouse, and the local farming and ranching community relies heavily on the Project water delivery facilities and the discharge from the Project tailrace. Water discharged from the Cow Creek powerhouse waters Hooten Gulch and the Abbott Ditch,

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<sup>1</sup> Available at eLibrary Accession No. 20080818-5053.

significant ecosystems that have existed for nearly a century and rely on the continuous flows provided by the Cow Creek development. The Tetrick Ranch and the Abbott Ditch Users rely on water discharged from the Cow Creek development for agricultural and domestic consumptive uses; for almost a century, the Abbott Ditch Users have relied exclusively on flows discharged from the Cow Creek Project to meet their farming and consumptive water needs. The exempt Poulton Hydroelectric Project, FERC Project No. 6594 (referred to as the “Wild Oak Development” in PG&E’s surrender application),<sup>2</sup> is also located in Hooten Gulch and is powered by the discharge from the Cow Creek powerhouse.

***B. Settling Parties***

1. Tetrick Ranch

Tetrick Ranch filed a timely, unopposed motion to intervene on July 13, 2009,<sup>3</sup> in this proceeding and is thus a party. The Tetrick Ranch property surrounds the Cow Creek Powerhouse. Tetrick Ranch also owns the exempt Poulton Hydroelectric Project, which utilizes the flows in the tailrace of the Cow Creek Development of Project No. 606 (South Cow Creek) and is located at Tetrick Ranch in Hooten Gulch. Tetrick Ranch holds a consumptive water right of 1.1 cfs, part of which it withdraws from Hooten Gulch, which is watered by the tailrace of the Cow Creek powerhouse. Tetrick Ranch’s water right is superior to PG&E’s non-consumptive right.

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<sup>2</sup> Volume 1, Ex. A at 8.

<sup>3</sup> Available at eLibrary Accession No. 20090713-5165.

Were the Kilarc-Cow Creek Project to be decommissioned as proposed by PG&E, Tetrick Ranch would no longer be able to operate the Poulton Project. Its water rights would also be threatened, as decommissioning of the project would eliminate continuity of flows in Hooten Gulch, and result in adverse economic impacts on its ranching operations.

## 2. Abbott Ditch Users

The Abbott Ditch Users filed a timely, unopposed motion to intervene on July 13, 2009,<sup>4</sup> and are thus parties to this proceeding. The Abbott Ditch diverts flows from Hooten Gulch and discharges them to South Cow Creek. The ADUs are property owners that are primarily engaged in agriculture; their properties are located along a three-mile stretch of the Abbott Ditch. The ADUs have the right under California state law to withdraw 13.16 cfs from South Cow Creek for consumptive use. For almost a century, for the mutual benefit of PG&E and the ADUs, this water has been withdrawn by PG&E from South Cow Creek at the PG&E diversion point and conveyed to the Cow Creek Plant; after power generation at the Cow Creek Plant, this water passes via Hooten Gulch to the Abbott Ditch, from which the ADUs withdraw the water to which they are entitled. Their ability to exercise their water rights to maintain their agricultural operations and the water supply for their homes will be jeopardized if the Kilarc-Cow Creek project is decommissioned and the historical point of diversion is rendered useless, as proposed in the PG&E Decommissioning Plan.

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<sup>4</sup> Available at eLibrary Accession No. 20090713-5165.



### 3. Shasta County

Shasta County filed a timely, unopposed motion to intervene in this proceeding on July 13, 2009,<sup>5</sup> and is thus a party. Shasta County is a governmental entity within the State of California and is responsible for the health and well-being of its approximately 180,000 residents, about half of whom are served as retail electric customers by PG&E. Shasta County is also the home of the Kilarc-Cow Creek Project and its associated recreational facilities. The County presently receives tax revenues from PG&E both for realty and, separately, for improvements, in an annual amount of approximately \$64,000. It also benefits from the State of California's collection of taxes on PG&E's income.

### 4. Sierra Pacific Industries, Inc.

Sierra Pacific Industries, Inc., is the owner of the timberlands that completely surround the intake, water conveyance ditch, and forebay (Kilarc Lake) of the Kilarc Development of the Project, as well as thousands of acres of land in the upper reaches of the Old Cow Creek watershed. These timber stands contribute significantly to the region's economy and could be threatened by the project's decommissioning. Kilarc Lake has long been used as a reservoir for area firefighting efforts, an important role given the area's vulnerability to forest fires. Furthermore, the water conveyance system associated with the Kilarc-Cow Creek project is a series of ditches, flumes, and tunnels. Decommissioning the entire system could lead to an unintended alteration of the hydrology of the area and result in significant damage to Sierra Pacific's timber and soil

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<sup>5</sup> Available at eLibrary Accession No. 20090713-5165.

resources. Sierra Pacific is based in Shasta County, and is a minority partner in Evergreen Shasta Power, LLC.

5. 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. It is committed to apply for exemptions to operate the Kilarc and Cow Creek Developments in a manner that will improve on current conditions and eliminate the need to decommission either the Kilarc or the Cow Creek Plants, thus preserving and enhancing the environmental, socioeconomic, recreational, and other benefits from the existing Project. The Managing Member of Evergreen Shasta is Steve Tetrick.

Sierra Pacific, a minority partner in Evergreen Shasta, owns and operates over 150 MW of biomass and small hydro generating facilities. The remaining members and management of Evergreen Shasta have a combined 50 years of hydroelectric development and operational experience.

***C. Standard for Commission Approval of an Application for Surrender***

The Commission applies a broad public interest standard in deciding whether to grant an application to surrender a hydropower project. While the “comprehensive development” standard used in licensing does not apply to surrenders (*Rochester Gas & Electric Corp.*, 100 F.E.R.C. ¶ 61,113, P 10 (2002)), the Commission is required to consider alternatives to surrender (*Niagara Mohawk Power Corp.*, 100 F.E.R.C. ¶ 61,185, P 13 (2002)). Moreover, the Commission has reiterated that “surrender applications are not guaranteed approval, and that the Commission’s public interest

analysis pursuant to Section 6 would consider the retention of the project facilities, with or without a license.” *Id.* P 13 n.18, citing *Arizona Pub. Serv. Co.*, 97 F.E.R.C. ¶ 61,315 (2001). In applying the Federal Power Act Section 6 (16 U.S.C. § 799) public interest standard in 2008, the Commission accepted the surrender application because it found that “this action will result in greater upstream and downstream fish movement, wider distribution of Appalachian elktoe mussels, as well as improvement of recreational opportunities in the Tuckasegee River.” *Duke Energy Carolinas, LLC*, 123 F.E.R.C. ¶ 61,069, P 61 (2008), *pet. for review denied sub nom. Jackson County, N.C. v. FERC*, No. 08-1224, 2009 U.S. App. LEXIS 28158 (D.C. Cir. Dec. 22, 2009). In this case, in contrast, approval of the surrender application with the proposed decommissioning of the Project would result in the destruction of well-established habitat and the loss of a recreational resource of great significance to and widely used by the community, would interfere with local entities’ exercise of their water rights under state law, and would not demonstrably improve fish passage or habitat.

As an alternative to PG&E’s Proposed Decommissioning Plan, the Offer of Settlement would avoid the adverse impacts on the community, individuals’ livelihoods, and the environment that would necessarily result from implementing PG&E’s Decommissioning Plan. Instead, it sets out a feasible way to meet the public interest standard, if adopted by the Commission, and allows PG&E a way to surrender its license in the public interest.

***D. Provisions of the Offer of Settlement***

Part I: This section describes the background and the parties to the Offer of Settlement.

Part II: These sections set out the purpose of the Offer of Settlement, which is to resolve all issues in the Project No. 606 proceeding presently before the Commission. More specifically, it is intended to allow PG&E to surrender its Kilarc-Cow Project license, but at the same time, to assure the continued operation of the Kilarc and Cow Creek Developments and the maintenance of the Project facilities by a third party. As such, the Offer of Settlement avoids the need for the Decommissioning Plan proposed by PG&E.

The implementation of the above objectives would be accomplished by authorizing PG&E, the current licensee, to surrender its Project No. 606 license (as it has requested), subject to the condition that PG&E agrees to sell the necessary Project No. 606 properties to Evergreen Shasta if certain preconditions are satisfied, including the issuance of a Commission decision granting exemptions to Evergreen Shasta to operate the Kilarc and Cow Creek Developments after the PG&E license surrender.

Part II, Section 2. If PG&E and the resource agencies agree, and subject to the Commission's approval, Evergreen Shasta agrees to file, at its own expense, exemption applications for the Kilarc and Cow Creek Developments ("Exemption Applications") with the Commission, and to purchase from PG&E all the necessary property and facilities associated with the Project upon receiving acceptable exemptions to operate them from the Commission. *Id.* Evergreen Shasta would request, and the other Settling Parties would support, the issuance of waivers to permit Evergreen Shasta to file the Exemption Applications while PG&E's license is still in place (and therefore also while PG&E still owns the Project Property), to allow continuity of operation of the Project.

Part III, Section 9.

Part III of the Offer of Settlement sets out the obligations of the Settling Parties, including the amount of the purchase price that Evergreen Shasta would pay to PG&E under the Part II provisions (Part III, Section 5). Part III, Section 6 sets out the obligation of Evergreen Shasta to prepare two Exemption Applications, at its own expense and at an estimated cost of one million five hundred thousand dollars (\$1,500,000), consistent with its alternative proposal to ensure the continuation of the existing major features of Project No. 606.

Evergreen Shasta proposes to continue the operations of the Kilarc and Cow Creek Developments of Project No. 606 as two separate exempt projects, but to enhance the projects' operations by: increasing minimum flows for the benefit of fish habitat (Part III, Section 6.1); improving the fish ladder at South Cow Creek (Part III, Section 6.2); and contributing funds for every kWh generated and sold over a 25-year period, either directly to the Shasta County Department of Resource Management or other local governmental entity, to a trust to be managed by such local governmental entity, or to such other manager or trust to be approved by Shasta County, to be invested in habitat restoration, ditch maintenance, and water quality measures in the Cow Creek watershed (Part III, Section 6.3).<sup>6</sup> As part of the Offer of Settlement, the Abbott Ditch

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<sup>6</sup> In their July 13, 2009 Comments on PG&E's License Surrender Application and Proposed Decommissioning Plan, Tetrick Ranch, the ADUs, and Shasta County proposed to make improvements to the existing Hooten Gulch for fish spawning and habitat purposes. Motion to Intervene and Comments of Tetrick Ranch, *et al.*, at 27-28, and Ex. A-1, Affidavit of Steve Tetrick ¶¶ 25-26, available at eLibrary Accession No. 20090713-5165. In response to subsequent comments from representatives of National Marine Fisheries Service ("NMFS") and the California Department of Fish and Game ("CDFG"), who indicated that a financial contribution to the local regional conservation district might be a preferable mitigation measure, the Settling Parties have modified their initial proposal to include a payment to a local governmental entity, or a trust, for purposes of habitat restoration and ditch maintenance in the watershed, including improving current irrigation practices for the benefit of water quality.

Users agree to negotiate in good faith with respect to the possible use of such funds to finance improvements to their irrigation practices for the benefit of water quality in South Cow Creek. Part III, Section 6.3. Evergreen Shasta also commits to working with Shasta County and the community of Whitmore to improve and preserve Kilarc Lake and the recreational resources associated with its use by the public. Part III, Section 6.4.

The Offer of Settlement acknowledges that the enhancements proposed for inclusion in the Exemption Applications will result in increasing the minimum flows now in effect for Project No. 606 and would also reduce total power production from the two developments. The reduced power production resulting from the increased minimum flows is estimated to reduce available revenues to Evergreen Shasta by approximately \$162,750 annually, which figure reflects revenues foregone to improve the fish habitat. Part III, Section 6.1.d. To the extent necessary and in recognition of their water rights, Tetrick Ranch and the ADUs authorize the use of their water rights for power generation and the prescribed instream flow uses prior to their withdrawal of the water for consumptive use, for the purposes of the Offer of Settlement. Part III, Section 6.1.e.

Under Part III, Section 7 of the Offer of Settlement, if PG&E accepts the license surrender terms as set out in a Commission Order essentially approving this Offer of Settlement (including all of the proposed conditions on PG&E's license surrender) and granting the necessary waivers to permit Evergreen Shasta to file exemption applications for the Kilarc and Cow Creek Developments prior to transfer of the Project Property and the final termination of the Project No. 606 License, Evergreen Shasta will pay \$250,000 into escrow or provide a letter of credit for \$250,000 within 60 days for the transfer of the PG&E properties. Such funds, together with the remainder of the purchase price set out

in Part III, Section 5, shall be payable to PG&E at such time as PG&E completes the last of the license surrender conditions anticipated in this Offer of Settlement and the Commission issues an acceptable Exemption to Evergreen Shasta for each of the two Developments.

Part III, Section 8 requires all the parties to the Offer of Settlement to support the issuance of acceptable Exemptions to Evergreen Shasta. Part III, Section 9 of the Offer of Settlement explains the necessity for Evergreen Shasta to obtain a Commission ruling on its Exemption Applications prior to the termination of the PG&E license. Critical to Evergreen Shasta's ability to fulfill the obligations of the Offer of Settlement is assurance of an adequate revenue stream from continued power operations and continuing water releases after it assumes ownership and operations. However, the application of the Commission's regulations could preclude the filing of exemption applications prior to the effective date of the Project No. 606 surrender and the transfer of the Project Property to Evergreen Shasta. Accordingly, the Offer of Settlement requires Evergreen Shasta to seek, and the other Settling Parties to support a request for, the necessary Commission waivers required to enable Evergreen Shasta to file its Exemption Applications in advance of the effective date of PG&E's license surrender and the transfer of the Project Property to Evergreen Shasta, in order to accomplish a transition process that would enable continued operation of both the water delivery and the power aspects of the Project, despite the change in ownership of the Project facilities.

Part III, Section 10 of the Offer of Settlement provides that if the Commission grants Exemptions to Evergreen Shasta consistent with this Offer of Settlement and Evergreen Shasta has received any and all necessary permits to operate the Kilarc and

Cow Creek developments, Evergreen Shasta and PG&E (if PG&E so elects) shall petition the Commission to declare PG&E's Project No. 606 license terminated and its obligations as to that Project at an end.

Part III, Section 11 provides for the transfer of the Project facilities to Evergreen Shasta and the payment by Evergreen Shasta to PG&E for the Project facilities.

Part III, Section 12 conditions the Offer of Settlement upon the Commission requiring that PG&E agree to enter into two power purchase agreements for the output of the Kilarc and Cow Creek developments, based on the form of PG&E's standard Power Purchase Agreement for Small Renewable Generation, and at a 25-year fixed rate of 10.852 cents per kWh, consistent with the Baseload Market Price Referent ("MPR") adopted by the California Public Utilities Commission in 2009 for Small Renewable Generators beginning deliveries in 2012. Part III, Section 13 further conditions the transfer of payment by Evergreen Shasta to PG&E on the written disclosure by PG&E of any known defects or limitations in the equipment, title to properties, or facilities associated with Project No. 606. If there are such defects or limitations, the transfer price established in Part III, Section 5 shall be adjusted to reflect the costs of repairs or limitations.

Also in Part III, Section 14, the Settling Parties agree to release PG&E from claims related to the relicensing/surrender of the Kilarc-Cow Creek Project, upon the transfer of the Project Property to Evergreen Shasta and the acceptance by Evergreen Shasta of Exemptions for the Kilarc and Cow Creek Developments.

Part IV of the Offer of Settlement requires the Settling Parties to support the Offer of Settlement before the Commission and other pertinent agencies. Part V provides for



continuing Commission jurisdiction until certain events occur or, in the event that the Commission lacks or declines jurisdiction, establishes a forum for the resolution of disputes.

Part VI contains the administrative provisions of the Agreement, including written notice (Section 21), Contact Persons (Section 22), and provisions for withdrawal from and termination of obligations under the Offer of Settlement (Section 27).

It is contemplated that the Commission will respond favorably to a request for a settlement proceeding that is being filed simultaneously with this Offer of Settlement. At that time and during the contemplated settlement negotiations, the Parties hereto and any other party can review this Offer of Settlement. By filing this Offer of Settlement and seeking a settlement proceeding, Evergreen Shasta and the other Settling Parties seek to expedite the timing and to engage in substantive consultation with the resource agencies in an open manner.

***E. Basic Issues Resolved by the Offer of Settlement***

Currently at issue in this proceeding is how to balance the rights and interests of residents and businesses in the community, water users, the local environment, the County government, and the broader public interest in preserving sources of renewable electricity, among others. For purposes of this proceeding, the Commission is not limited in its decision to decide only *how* the Project will be decommissioned, as has been asserted at times in this proceeding. Transcript of October 22, 2009 Resource Agency Meeting at 33:7-35:19, 119:8-120:6;<sup>7</sup> *cf. Niagara Mohawk Power Corp.*, 100 F.E.R.C.

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<sup>7</sup> Available at eLibrary Accession No. 20091022-4010.

¶ 61,185, P 13 (2002); *Arizona Pub. Serv. Co.*, 97 F.E.R.C. ¶ 61,315 (2001). PG&E's License Surrender Application and Proposed Decommissioning Plan primarily addresses the concerns of the Licensee and the resource agencies. It ignores the overwhelming support in the community to retain the Kilarc-Cow Creek Project features and fails to address how the concerns of the water users will be satisfied. *See* Scoping Comments and Information Submission of Tetrick Ranch and Abbott Ditch Users (filed Oct. 16, 2009), *available at* eLibrary Accession No. 20091016-5088.

In contrast to the limited objective sought by the PG&E License Surrender Application and Proposed Decommissioning Plan, the Offer of Settlement will preserve Kilarc Lake as a recreational resource and reservoir for firefighting purposes; maintain the existing, well-established riparian habitat based on the current flows; improve fish habitat through increased minimum flows and other measures; respect the water rights of Tetrick Ranch and the Abbott Ditch Users; retain 5 MW of existing renewable hydroelectric generation; maintain the flow of tax revenues to the County from the existing hydroelectric operations; eliminate the need for PG&E's customers to pay in excess of \$14.5 million for tasks required by PG&E's decommissioning plan; and avoid the unknown risks associated with the proposed decommissioning, including the possibility that Kilarc Lake is needed for water table recharging and the potential release of toxic sediments from behind the Project dams with no plans for safe disposition.

The Offer of Settlement presents an alternative that is viable and preferable to the proposed decommissioning, and it must be considered in the Commission's analysis and decision-making, including in the context of a license surrender application. 42 U.S.C. § 4332(2)(E). As the U.S. Court of Appeals for the District of Columbia Circuit affirmed

in a case about abandonment of a natural gas line, “[t]he existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity.” *City of Pittsburgh v. FPC*, 237 F.2d 741, 751 n.28 (D.C. Cir. 1956).

***F. The Offer of Settlement Resolves the Disposition of the Kilarc-Cow Creek Project in the Public Interest***

**1. The Offer of Settlement Resolves a Conflict Between the Licensee and the Community that Cannot Be Solved by the Licensee’s Surrender and Decommissioning Proposal**

PG&E’s application to decommission the Kilarc-Cow Creek Project poses a conflict with the community’s interest in preserving the Project features because of the many primary and secondary impacts that this long-established Project has created that support, benefit, and have become an integral part of the community and the lives and environment of the residents and businesses in the Project area. However, it is possible both to satisfy PG&E’s desire to no longer be the Licensee for the Kilarc-Cow Creek Project, and to avoid the adverse impacts that PG&E’s decommissioning proposal would necessarily impose on the Project community. That is what this Offer of Settlement does, with considerably superior public benefits, while avoiding over \$14.5 million in costs to PG&E’s ratepayers as well as avoiding the destruction of the livelihoods of long-established ranching and farming interests in the community, or the requirement of new capital investments by all involved to design, site, acquire easements and rights-of-way for, obtain approvals for, and construct at least one, if not two, water diversion systems and a new community lake and firefighting water source. Moreover, the Offer of Settlement will both produce more renewable hydropower and be more protective of the

environment than would PG&E's decommissioning proposal. It is wholly consistent with and supports both national and state renewable energy standards and policy.

The Project Agreement reached in 2005 between PG&E and the resource agencies assumed that by this time, the issue of the water rights users would be resolved. For the record, it has not been resolved. Nor has the issue of the water rights users and their continued use of their state water rights been resolved by the PG&E Surrender Application and Proposed Decommissioning Plan. Commission approval of the Offer of Settlement as an alternative to the PG&E decommissioning proposal would be far more favorable inasmuch as it promotes the Commission's objectives; is more complete in its resolution of both the water rights and the hydropower issues that must be resolved jointly because of the dual nature and use of the single set of facilities; and its adoption could not be said to create adverse impacts as the PG&E decommissioning proposal clearly does.

2. The Offer of Settlement Avoids the Adverse Effects Caused by PG&E's Surrender and Decommissioning Proposal and Is a Complete Resolution

This Offer of Settlement resolves issues of the public interest that simply have not been addressed by PG&E's License Surrender Application and Proposed Decommissioning Plan, but that are critical to the Commission's consideration whether to approve the proposed Application and Plan. First, PG&E acknowledged that its Application does not attempt to address the issue of assuring the ADUs a continuous and adequate source of water for their agricultural operations. *See* PG&E's Response to

FERC Additional Information Request, at 12 n.12 (filed Dec. 23, 2009).<sup>8</sup> As PG&E states: “...it has been PG&E’s *expectation* that issues involving matters of state water law would be addressed in a state forum. PG&E, therefore, did not address them in the LSA.” *Id.* (emphasis added). Yet, how could the Commission determine whether the proposed surrender and decommissioning are in the public interest, without knowing how the Abbott Ditch Users’ water rights will be resolved? These people have relied on the present facilities for about a hundred years for their livelihood; PG&E proposes to dismantle their primary access to the water they are entitled to. That is not an acceptable “resolution.”

Unlike the PG&E proposal, the Offer of Settlement will resolve the Abbott Ditch Users’ concerns by continuing the conveyance and delivery of water in the same way as has occurred over this past century. *See* Offer of Settlement, Part III, Section 6.1.

Leaving the ADUs’ concerns unresolved, as proposed by PG&E, would also have adverse impacts on the Commission’s administration of the Federal Power Act. Specifically, the failure of PG&E to address the ADUs’ concerns would result in a situation wherein PG&E would, as it has since March 2007, continue to receive an annual license to operate Project No. 606 under its expired license while the question of the ADUs’ water delivery was resolved. If, as is not unreasonable to assume, the design, siting, acquisition of easements and rights-of-way, approval, and construction of the replacement water delivery system—all necessary steps to replace the current system—take a decade or two, if they occur at all, then the result is that PG&E will effectively

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<sup>8</sup> Available at eLibrary Accession No. 20091223-5141.

have leveraged an expired license into a new license with similar terms and conditions for a period of 20-25 years or forever, if the required authorization for a replacement diversion does not materialize. Clearly, the removal or replacement of the water conveyance system contemplates years of litigation and expense by other parties. To perpetuate in PG&E an “annual” license that would be a virtual long-term, if not indefinite, new license would run contrary to the provisions of the FPA that licensees receive only a limited term license; and it would be particularly egregious and bad public policy to allow a licensee to announce the intention to surrender a license, create a side deal that benefits it, and then further benefit at the expense of the community and the Commission because of the Licensee’s failure to submit a Decommissioning Plan that clearly and appropriately address the impacts of its decision to surrender its license and to decommission the operating hydropower facilities.

Even if the issues of design, siting, acquisition of easements and rights of way, approval, and construction of the replacement water system could be overcome, there is the question of how the ADUs would be able to afford these costs, as well as the costs of maintaining the replacement system if constructed. For almost a century, the diversion and delivery costs of water have been assumed by the hydro developer of the Cow Creek Project, and it is questionable how and whether the ADUs could afford to assume these costs. PG&E’s position has been that it is not responsible for these costs, whether capital or maintenance; the failure of the License Surrender Application to even address these concerns is unacceptable, inasmuch as it leaves the Commission no basis for a public interest determination.

In addition to the issue of the construction of a replacement water system, which has obviously not yet been evaluated, there is the further question of the disposition of the lands on which Project No. 606 is now situated in the event the Commission were to approve PG&E's surrender application. During the scoping meetings held in October 2009, a question was raised by a property owner as to the right of PG&E to remove the water conveyance facilities associated with the Cow Creek development, because of the limited terms of the right-of-way held by PG&E for those facilities. *See* Transcript of October 22, 2009 Resource Agency Meeting at 85-86;<sup>9</sup> *also related* Judgment and Decree Quieting Title to Real Property (filed Nov. 5, 2009), *available at* eLibrary Accession No. 20091116-0235. If the property owner's claim is correct, there are further questions whether PG&E could, in fact, decommission that portion of the Project. And further, even if it were finally determined by a state court that PG&E were entitled to remove those Project facilities, there is the issue of a possible transfer from PG&E of the affected property to a non-PG&E entity, namely, the Land Stewardship Council, which under PG&E's bankruptcy agreement, is or could be the recipient of this property. Should such transfer of the Project No. 606 property occur, absent a Commission requirement that the present water conveyance system remain in place and be maintained, there could well be no way to assure the continued use of the existing water conveyance system to supply the ADUs.

In short, approval of the PG&E License Surrender and Proposed Decommissioning Plan would create a mess, and it is a mess that PG&E has not even

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<sup>9</sup> *Available at* eLibrary Accession No. 20091022-4010.

attempted to resolve. Yet, resolving these problems is at the heart of the well-being of this community and the Commission's public interest criteria.

The plethora of unresolved issues resulting from PG&E's Surrender Application and Proposed Decommissioning Plan has been addressed by the Offer of Settlement and in other filings being made today. If approved by the Commission, the Offer of Settlement could resolve the issues created by PG&E's proposal, still give PG&E its requested license surrender, continue the long-standing water delivery and hydro operations with their benefits to the community, and as such, avoid the adverse impacts of the only other proposal before the Commission at this time.

***G. Information required by the October 15, 2003 Notice of the Chief Administrative Law Judge to the Public for Submission of Offers of Settlement***

**1. Issues Underlying the Settlement and Major Implications**

The Commission must balance many interests in this case. Most, if not all, of these interests weigh in favor of approving this Offer of Settlement. The Offer of Settlement is more protective of the environment than PG&E's decommissioning proposal and would produce more renewable energy; it preserves Kilarc Lake as a recreational and aesthetic resource, reservoir for firefighting purposes, and essential component of the established hydrology in the area; and it respects the existing water rights of Tetrick Ranch and the ADUs. In contrast, the one factor argued to favor PG&E's decommissioning plan—an assumed improvement in creek conditions for purposes of steelhead habitat—has not been documented, cannot be reasonably assumed, and certainly cannot be reasonably determined to outweigh the heavy costs of decommissioning based on the record of this proceeding. *See* Comments of Erik Poole to



FERC Project Team for P-606-027 (filed Dec. 30, 2009), *available at* eLibrary Accession No. 20091230-5100.

## 2. Policy Implications

The central question before the Commission is whether it should approve a proposal to decommission a project where the current licensee's commitment to decommission the project is not necessary for the surrender, but is based primarily on a deal struck with resource agencies that has not been approved by the Commission, and where those opposed to the decommissioning were not allowed to participate. Moreover, the "deal" purports to honor water rights, but as actually proposed to be implemented, it does not. At this time, there is an entity willing and able to acquire the entire Project and to continue to operate it. Approving PG&E's License Surrender and Proposed Decommissioning Plan, based on the evidentiary record in this case, would set Commission precedent that a licensee can not only surrender a license, but dismantle a project, for any reason and at any time, regardless of the negative impact on the community and the environment, and regardless of whether such decommissioning results in the proper use of the water resources of the United States. Approval of this Offer of Settlement, on the other hand, would be consistent with the Commission's existing policy of applying a broad public interest standard to license surrender applications.

## 3. Other Pending Cases Will Not Be Affected

This Offer of Settlement will not affect any other pending cases, to the best of the Settling Parties' information.

4. The Settlement Offer Does Not Involve Issues of First Impression, Nor Are There Any Previous Reversals on the Issues Involved

The Settling Parties believe that this settlement offer may be unique as to its facts, but the legal principles to be applied by the Commission in determining whether to approve or to not approve the Offer of Settlement are well-established.

5. The Proceeding Is Not Subject to the Just and Reasonable Standard and There Is No *Mobile-Sierra* Language

Since this proceeding does not involve rates, it is not subject to the just and reasonable standard, nor is there *Mobile-Sierra* language that adopts that standard.

***H. The Offer of Settlement Is Consistent With the Objectives Set Out in the FPA***

Approval of PG&E's decommissioning proposal would result in: (1) the loss of more than 5 MW of existing renewable hydropower; (2) the expenditure of at least \$14.5 million that would be added to the rates paid by the customers of PG&E; (3) the expenditure of perhaps two million dollars or more by the local ranching and farm families to design, site, acquire easements and rights-of-way for, obtain approvals and permits for, and construct an alternative, new water diversion feature to exercise their present water rights and make a living for themselves, if it is in fact possible to construct a new diversion at all; (4) the loss of a local lake that provides recreation and aesthetics to the local population; (5) the loss of a water resource for firefighting on a large scale; (6) the unknown impacts on land, groundwater, and the waterway of the removal of long-established Project features, including the potential release of toxic sediment currently behind Project dams; (7) loss to the County of tax revenues from existing Project

operations; and (8) the risks of failure for the residents, business owners, and the community at large if the mitigation measures yet to be proposed by PG&E don't work.

The Commission's mandate includes: (1) the administration of Part I of the FPA, which was designed to encourage greater hydroelectric development in the United States (*See, e.g., First Iowa Hydro-Elec. Co-op. v. FPC*, 328 U.S. 152, 180 n.23 (1946)); (2) study of the use of hydropower in regions and in interstate or foreign commerce (FPA § 4; 16 U.S.C. § 797); (3) the preservation of state water law and rights (FPA § 27; 16 U.S.C. § 821); (4) the promotion of the public interest, including recreation and aesthetic enjoyment by the public as well as environmental considerations (FPA §§ 4, 7, and 10<sup>10</sup>); *see also* FPA § 6; *Niagara Mohawk Power Corp.*, 100 F.E.R.C. ¶ 61,185, P 13 (2002); *Arizona Pub. Serv. Co.*, 97 F.E.R.C. ¶ 61,315 (2001); *Duke Energy Carolinas, LLC*, 123 F.E.R.C. ¶ 61,069, P 61 (2008)); and (5) the establishment of a substantive record to support Commission action (FPA § 313(b); 16 U.S.C. § 825l(b), and the Administrative Procedure Act §§ 556, 706; 5 U.S.C. §§ 556, 706).

This Offer of Settlement is consistent with the purposes of the Federal Power Act; resolves what is otherwise a conflict between the Licensee's proposal and the interests of the community and national policy; resolves a license surrender in favor of the Licensee, so that PG&E will be allowed to surrender its license in an appropriate manner; and resolves, in a demonstrable way, the enhancements available in the watershed consistent with the state water laws.

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<sup>10</sup> 16 U.S.C. § 803.

- 24 -

## CONCLUSION

For the foregoing reasons, the Settling Parties respectfully request that the Commission review the attached Settlement Offer, which is a viable and reasonable alternative to PG&E's proposed surrender and decommissioning, and take such other action as would expedite its prompt consideration and approval.

Respectfully submitted,

/s/ Frances E. Francis

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January 22, 2010

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## **OFFER OF SETTLEMENT**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Pacific Gas and Electric  
Company**

**Project No. 606-027**

**OFFER OF SETTLEMENT  
OF  
TETRICK RANCH, ABBOTT DITCH USERS,  
SIERRA PACIFIC INDUSTRIES, INC., SHASTA COUNTY, AND  
EVERGREEN SHASTA POWER, LLC**

Submitted: **January 22, 2010**

This Offer of Settlement (“Offer of Settlement”), dated January 21, 2010, constitutes the Agreement of Tetrick Ranch, the Abbott Ditch Users, Shasta County, Sierra Pacific Industries, Inc., and Evergreen Shasta Power, LLC (hereafter, “Settling Parties”), to engage in certain activities for the purpose of resolving all outstanding issues relating to the Kilarc-Cow Creek Project in the Federal Energy Regulatory Commission (“FERC” or “Commission”) proceeding known as *Pacific Gas and Electric Company*, Project No. 606-027.

### **PART I**

WHEREAS, Pacific Gas and Electric Company (“PG&E”) is the Licensee for FERC Project No. 606 (the “Kilarc-Cow Creek Project”), which license to continue the operation of the 5 MW project expired in March 2007;

WHEREAS, PG&E has filed an application to surrender its Project No. 606 license and a Plan to decommission the Kilarc-Cow Creek Project, presumably consistent with the 2005 Kilarc-Cow Creek Project Agreement (“2005 Resource Agencies Agreement”) that PG&E entered into with the United States Fish and Wildlife Service, the California Department of Fish and Game, the National Park Service, the State of California Water Resources Control Board (“SWRCB”), the National Marine Fisheries Service, and Friends of the River (collectively, the “Resource Agencies”), in the event that PG&E determined to surrender its license for Project No. 606 and was ordered by the Commission to decommission the Project;

WHEREAS, the decommissioning of the Kilarc-Cow Creek Project would remove all existing Project works, and have serious detrimental impacts including, but not limited to, the draining of Kilarc Lake, an important recreational resource in the Whitmore and Shasta

County community and a reservoir needed for fighting forest fires; the loss of the Kilarc-Cow Creek Project's 5 MW of renewable power; the loss of the exempt Poulton Project's (Project No. 6594) 545,580 kWh/year of renewable power; the loss of the long-established riparian habitat in Hooten Gulch; and the loss of the water conveyance facilities used by local water rights holders for nearly a century, thereby precluding the use of their water and property rights, with minimal compensatory benefits;

WHEREAS, Tetrick Ranch is a party to the Project No. 606-027 relicensing and surrender proceeding, having filed a timely, unopposed motion to intervene on July 13, 2009; owns and sells the output of the exempt Poulton Project (or "Wild Oak Development") (FERC Project No. 6594), located at Tetrick Ranch in Hooten Gulch; and has the right under California state law to withdraw 1.1 cfs from South Cow Creek for consumptive use, a water right superior to and earlier in time than PG&E's non-consumptive water rights associated with the Project;

WHEREAS, Hooten Gulch on the South Cow Creek side of the Project, which currently receives flows from the tailrace of the Cow Creek Development of the Kilarc-Cow Creek Project, has been a continual riparian habitat for nearly a century and is home to a variety of fish, amphibians, and water fowl; provides a watering source for livestock at Tetrick Ranch; and would, were PG&E's proposal to be accepted, be de-watered, receiving only storm runoff;

WHEREAS, the Abbott Ditch Users are parties to the Project No. 606-027 proceeding, having filed a timely, unopposed motion to intervene on July 13, 2009; and have the right under California state law to withdraw 13.16 cfs from South Cow Creek for consumptive use, said amount having been withdrawn for the mutual benefit of both PG&E



and the ADUs for nearly a century from the current PG&E diversion point on South Cow Creek and conveyed to the Cow Creek Plant, and after power generation at the Cow Creek Plant, flowing via Hooten Gulch to the Abbott Ditch;

WHEREAS, Shasta County is a party to the Project No. 606-027 proceeding, having filed a timely, unopposed motion to intervene on July 13, 2009; is a governmental entity within the State of California and the location of the Kilarc-Cow Creek Project and associated recreational facilities; and is responsible for the health and wellbeing of its approximately 180,000 residents, about half of whom are served as retail electric customers by PG&E;

WHEREAS, Sierra Pacific Industries, Inc., is the owner of the timberlands that completely surround the intake, water conveyance ditch, and forebay (Kilarc Lake) of the Kilarc Development, as well as thousands of acres of land in the upper reaches of the Old Cow Creek watershed, which contribute significantly to the region's economy, and could be threatened by the project's decommissioning;

WHEREAS, 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;

WHEREAS, members of Evergreen Shasta have ownership and operational experience necessary to acquire, maintain, and improve the Kilarc-Cow Creek Hydroelectric Project facilities;

WHEREAS, the Kilarc Forebay, otherwise known as Kilarc Lake, has long been a convenient, easily accessible recreation area enjoyed by residents of Whitmore and Shasta County for picnicking, fishing, and other day uses; its facilities and location are extremely

beneficial for these uses by the handicapped; and Kilarc Lake would disappear were PG&E's proposal to be accepted, leaving Shasta County with few, if any, comparable recreational resources available to its residents;

WHEREAS, Kilarc Lake serves as a reservoir for area firefighting efforts, and its removal could jeopardize those efforts, threatening surrounding forest areas and valuable timber stands;

WHEREAS, PG&E has not yet conducted in-depth studies that assess the impacts of the proposed decommissioning of either the Kilarc or the Cow Creek Developments on existing physical features such as South Cow Creek, Old Cow Creek, and Hooten Gulch, as well as the effects of such decommissioning on the community and the economic impacts upon the residents in the Project area, and PG&E proposes to delay such studies until approval is granted by the Commission to PG&E to decommission the Project facilities;

WHEREAS, Evergreen Shasta is capable of undertaking and prepared to undertake the continued operation and maintenance of the Kilarc and Cow Creek Developments, and to consult with the relevant resource agencies to enhance certain features of the Project;

WHEREAS, time is of the essence for Evergreen Shasta to undertake those steps necessary to allow the continued operation and maintenance of the Kilarc and Cow Creek Developments; and

WHEREAS, a decision to decommission the century-old multiple-use facilities—facilities that have continuously served the local community and agricultural, lumbering and ranching businesses; have provided hydropower production; and affect two separate watersheds and rivers—is, and should be, undertaken only after adequate scrutiny and

evaluation under both state and federal laws and careful consideration of all reasonable alternatives to decommissioning;

**NOW THEREFORE,**

The Settling Parties enter into this Offer of Settlement, which sets forth the means to resolve all issues outstanding in the Kilarc-Cow Creek relicensing and license surrender proceedings; to protect the water and property rights and beneficial uses of Tetrick Ranch, the Abbott Ditch Users, and Sierra Pacific Industries, as anticipated by the 2005 Resource Agencies Agreement; and to maintain Kilarc Lake as a local recreational area for the Whitmore community and other Shasta County residents and as a reservoir for firefighting purposes.

**PART II**

**Purpose of the Offer of Settlement**

Sec. 1. The purpose of this Offer of Settlement is to resolve all issues in the Kilarc-Cow Creek relicensing and surrender proceedings, including the license surrender application filed by PG&E and its Proposed Decommissioning Plan, by providing for the maintenance and operation of the present Project No. 606 Kilarc and Cow Creek Developments in a manner that promotes the public interest and is consistent with the most comprehensive plan for the development of South Cow Creek and Old Cow Creek. Furthermore, it provides a viable solution that allows the continued use of multiple-use facilities of long-standing and significant value to the Old Cow Creek and South Cow Creek communities, protects state-granted water rights, protects a valuable habitat of long-standing at Hooten Gulch and along Abbott Ditch, and avoids the uncertain and adverse impacts of decommissioning.

Sec. 2. The Offer of Settlement shall be filed promptly with the Commission, and, if accepted and approved by the Commission, this Offer of Settlement contemplates that PG&E would agree to transfer the existing Kilarc-Cow Creek Project facilities and property to Evergreen Shasta to enable Evergreen Shasta, at its own expense, to prepare and file applications for exemptions from FERC to operate the two Project Developments, one for the Kilarc Development and one for the Cow Creek Development, under terms and conditions consistent with Part III of this Offer of Settlement, all as conditions to the Commission's approval of PG&E's request to surrender its license for Project No. 606. Upon final approval by the Commission of the Exemption Applications filed by Evergreen Shasta and the acceptance by Evergreen Shasta of the Exemptions, the PG&E Surrender of its Project No. 606 license would be final, and the Project No. 606 license would be replaced by the two exemptions. The proposed Decommissioning Plan would also be rejected as unnecessary at that time.

The Settling Parties believe that the implementation of this Offer of Settlement is the only way to achieve the objectives of all of the interests of the community; grants PG&E's request to surrender its Project No. 606 license at a lower cost to PG&E than currently contemplated by the Proposed Decommissioning Plan; is consistent with the objective of the 2005 Resource Agencies Agreement to proceed with decommissioning only if it also preserved the rights of existing water users; preserves desirable renewable energy resources and continues to make them available to California consumers; saves electricity consumers millions of dollars otherwise necessary for decommissioning; and achieves a balancing of interests and factors that is in the public interest.

Sec. 3. It is understood that this Offer of Settlement can only become effective upon such action by the Commission in the Kilarc-Cow Creek relicensing proceeding, Project No. 606-027 (hereafter, "Commission Action"), as will enable the Settling Parties, as applicable, to meet their obligations and to perform the actions necessary to achieve the purposes of this Offer of Settlement, and that time is of the essence and the underlying assumption in the provisions setting forth this Offer of Settlement.

### **PART III**

#### **Obligations of the Settling Parties**

Sec. 4. The Settling Parties envision two related Commission actions as conditions precedent to the full implementation of this Settlement Agreement:

1. Issuance of a final Order or Orders by the Commission: (a) approving this Offer of Settlement and PG&E's Surrender of the Project No. 606 license, subject to conditions requiring the transfer of the Project Property to Evergreen Shasta as stated in Sections 5 and 11 below, and consistent with the provisions of this Offer of Settlement, and (b) granting waivers of the Commission's regulations as necessary to permit Evergreen Shasta to file Exemption Applications for the Kilarc and Cow Creek Developments, substantially as described in Section 6 hereto, prior to transfer of the Project Property and the final termination of the Project No. 606 License held by PG&E ("Settlement and Waiver Order"); and
2. Issuance of a final Order or Orders by the Commission granting the Exemption Applications of Evergreen Shasta, substantially as described in Section 6 hereto, and making PG&E's Surrender of the Project No. 606 License effective ("Surrender and Exemption Order").

Sec. 5. Evergreen Shasta agrees that, at such time as a Surrender and Exemption Order consistent with Section 4.2 becomes final, and Evergreen Shasta accepts the Exemptions granted by the Commission for the Kilarc and Cow Creek Developments, Evergreen Shasta will promptly pay PG&E the lesser of \$1.1 million or the Fair Market Value for the acquisition of the property associated with the Kilarc-Cow Creek Project, including PG&E's Project No. 606 real property, all easements and rights-of-way, water rights, Project facilities, and all other property necessary to claim ownership for purposes of acquiring exemptions for the Kilarc and Cow Creek Developments ("Project Property"). For purposes of this section, Fair Market Value shall expressly exclude the value of the Project Property for power generation, and shall be limited to the value of the Project Property for non-power purposes.

Sec. 6. Evergreen Shasta agrees that if a Settlement and Waiver Order consistent with Section 4.1 is issued and becomes final, and PG&E accepts the license surrender terms in that Order, Evergreen Shasta will submit two Exemption Applications (one Exemption Application for the Cow Creek Development and one Exemption Application for the Kilarc Development), substantially including the provisions described herein, and as detailed in Attachment A hereto, for filing with the Commission. Such Exemption Applications shall be prepared by Evergreen Shasta, at its own expense and at an estimated cost of One Million Five Hundred Thousand Dollars (\$1,500,000), pursuant to 18 C.F.R. pt. 4, subpart K; and the Applications shall include proposed terms and conditions that will provide additional instream flow for fish in comparison to the current Project license conditions, establish a twenty-five (25) year fund for habitat restoration and water quality in the Cow Creek watershed, improve the fish ladder at South Cow Creek, and provide for negotiations on

financial support from hydropower revenues for recreation facilities at Kilarc Lake, as follows:

1. **Minimum instream flows.** A SCADA system will be used to control flows, and minimum instream flows from the Kilarc and Cow Creek Developments will be increased above the minimum levels required under the current license, while also protecting and sustaining the existing riparian habitat. Specifically:
  - a. With respect to the Cow Creek Development, in South Cow Creek during periods when the Sacramento River runoff at Bend Bridge is forecasted to be 70 percent of normal or higher, from:
    - i) April 1 to October 31:
      - (1) The first 4 cfs of the South Cow Creek flows at the existing South Cow Creek Diversion Dam will be released as instream flows;
      - (2) the next 14 cfs of South Cow Creek flows (*i.e.*, flows in excess of 4 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;
      - (3) the next 4 cfs (*i.e.*, flows in excess of 18 cfs) will be released as instream flows;
      - (4) the next 36 cfs (*i.e.*, flows in excess of 22 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;
      - (5) the balance of South Cow Creek flows will be released as instream flows.

- ii) November 1 to March 30:
  - (1) The first 4 cfs of the South Cow Creek flows at the existing South Cow Creek Diversion Dam will be released as instream flows;
  - (2) the next 5 cfs of South Cow Creek flows (*i.e.*, flows in excess of 4 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch for domestic uses;
  - (3) the next 4 cfs (*i.e.*, flows in excess of 9 cfs) will be released as instream flows;
  - (4) the next 45 cfs (*i.e.*, flows in excess of 13 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;
  - (5) the balance of flows will be released as instream flows.

b. With respect to the Cow Creek Development, in South Cow Creek during periods when the Sacramento River runoff at Bend Bridge is forecasted to be less than 70 percent of normal, from:

- i) April 1 to October 31:
  - (1) The first 2 cfs of the South Cow Creek flows at the existing South Cow Creek Diversion Dam will be released as instream flows;
  - (2) the next 14 cfs of South Cow Creek flows (*i.e.*, flows in excess of 2 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;



- (3) the next 2 cfs (*i.e.*, flows in excess of 16 cfs) will be released as instream flows;
  - (4) the next 36 cfs (*i.e.*, flows in excess of 18 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;
  - (5) the balance of South Cow Creek flows will be released as instream flows.
- ii) November 1 to March 30:
  - (1) The first 2 cfs of the South Cow Creek flows at the existing South Cow Creek Diversion Dam will be released as instream flows;
  - (2) the next 5 cfs of South Cow Creek flows (*i.e.*, flows in excess of 2 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch for domestic uses;
  - (3) the next 4 cfs (*i.e.*, flows in excess of 7 cfs) will be released as instream flows;
  - (4) the next 45 cfs (*i.e.*, flows in excess of 11 cfs) will be diverted and delivered through the Cow Creek powerhouse to the Abbott Ditch;
  - (5) the balance of flows will be released as instream flows.
- c. With respect to the Kilarc Development in Old Cow Creek:
  - i) 2 cfs will continue to be released as instream flows at the existing Kilarc Main Canal Diversion Dam.

- ii) The North Canyon Creek Diversion Dam and North Canyon Creek Canal, which currently divert an additional 2.5 cfs to the Kilarc Main Canal that would otherwise flow into Old Cow Creek from North Canyon Creek, will be removed. This change will increase minimum instream flows from 2 cfs to up to 4.5 cfs in Old Cow Creek, upstream from the Kilarc Powerhouse and downstream from the confluence of North Canyon Creek and Old Cow Creek.
- d. It is understood by all Settling Parties that the increased minimum flows proposed by Evergreen Shasta are expected to occur primarily in the months of July, August, September, and October, and are estimated to reduce total power production from the two Developments from an annual average of 31 GWh as stated by PG&E to an estimated 29.5 GWh/year. This decrease in annual generation represents approximately \$162,750 per year of revenue that will be forgone to improve fish habitat. Attachment A hereto shows the projected effect of this Offer of Settlement on energy output and revenues for the Kilarc and Cow Creek Developments under varying conditions.
- e. Tetrick Ranch and the Abbott Ditch Users consider the terms and conditions of this Offer of Settlement as protective of their water and property rights; and while exemptions consistent with this Offer of Settlement, including the above-prescribed minimum instream flows, are in place, they authorize the use of their water rights, to the extent necessary and as provided in this Section 6.1; and in connection solely with this Offer of Settlement, they agree to release such claims regarding water rights and the method of delivery as

will enable the Settling Parties to fulfill the obligations of this Offer of Settlement.

2. **Fish Ladder Improvements.** Evergreen Shasta will seek to improve the fish ladder at South Cow Creek, after consulting with resource agencies about the most effective way to do so, and will include such improvements as are acceptable and allow Evergreen Shasta to meet the financial criteria in its Exemption Application for the Cow Creek Development.
3. **Contributions to Cow Creek Watershed Habitat Restoration/Ditch Maintenance.** As part of its Exemption Applications, Evergreen Shasta will include a provision under which it will pay 5 mills per kWh for each kWh produced by the exempted Cow Creek and Kilarc Developments, either directly to the Shasta County Department of Resource Management or other local governmental entity, to a trust to be managed by such local governmental entity, or to such other manager or trust to be approved by Shasta County, to be invested in habitat restoration and water quality measures in the Cow Creek watershed for a 25 year period. Possible uses of such funds include the financing of improvements to the irrigation practices of the Abbott Ditch Users for the benefit of water quality in South Cow Creek. The Abbott Ditch Users agree to negotiate in good faith with respect to the use of such funds to finance improvements to their irrigation practices for the benefit of water quality in South Cow Creek. The estimated dollar effects of this commitment are shown in Attachment A hereto.
4. **Recreational Facilities at Kilarc Lake.** Evergreen Shasta and Shasta County agree to negotiate in good faith an agreement under which Evergreen Shasta will pay

Shasta County an amount to be determined, in consideration for Shasta County's assuming responsibility for operations and maintenance (including liability insurance) for the recreational facilities at Kilarc Lake.

5. **Preparation of Exemption Applications.** Evergreen Shasta shall use best efforts to complete the preparation of such Exemption Applications within 60 days after the Settlement and Waiver Order becomes final, and shall seek and request the cooperation of the other parties to the FERC proceeding, including the resource agencies.

Sec. 7. Within 60 days after a Settlement and Waiver Order consistent with Section 4.1 has issued and become final and PG&E has accepted the license surrender terms in that Order, Evergreen Shasta shall either: (a) pay \$250,000 into escrow as partial payment for the Project Property, to be held in escrow until Evergreen Shasta is authorized to own, operate, and maintain the Project Developments under FERC exemptions; or (b) provide a letter of credit to PG&E for \$250,000, which letter of credit shall become payable at such time as a Surrender and Exemption Order consistent with Section 4.2 becomes final and effective, and Evergreen Shasta accepts the Exemptions granted by the Commission for the Kilarc and Cow Creek Developments. Evergreen Shasta's obligation to maintain the letter of credit or funds in escrow shall expire 12 months after the date such funds or letter of credit are provided, unless Evergreen Shasta and PG&E agree to extend such escrow or letter of credit. Regardless of the amount of such Evergreen Shasta funds in escrow or the value of any such letter of credit, the full purchase price stated in Section 5 (subject to adjustments, if any, under Section 13) shall be due upon transfer of the Project Property to Evergreen Shasta pursuant to Section 11.

Sec. 8. Evergreen Shasta and all other Settling Parties shall, as appropriate, file for and support such regulatory approvals of the transfer of Project Property and the Exemption Applications of Evergreen Shasta as are necessary to achieve the objectives of this Offer.

Sec. 9. The Settling Parties agree that because Evergreen Shasta cannot maintain the Project Property and provide the benefits intended by this Offer of Settlement without a revenue stream from continued power operations and such continued power operations are critical to achieving the objectives of this Offer, it is crucial that Evergreen Shasta obtain a Commission ruling on its Exemption Applications prior to termination of the PG&E License for Project No. 606 and transfer of the Project Property. Accordingly, Evergreen Shasta shall seek from the Commission, and the other Settling Parties shall support Evergreen Shasta's request for, waivers of the Commission's regulations as necessary to permit Evergreen Shasta to file its Exemption Applications prior to transfer of the Project Property and the final termination of the Project No. 606 License held by PG&E, and to ensure continuity and uninterrupted operation and maintenance of the Project and water deliveries.

Sec. 10. At such time as Evergreen Shasta is granted Exemptions for the Kilarc and Cow Creek Developments by the Commission consistent with this Offer of Settlement and has received any and all permits as necessary to operate Project No. 606 consistent with its authority, it is contemplated that PG&E and Evergreen Shasta shall petition the Commission to declare that PG&E's surrender of the Project No. 606 license is complete, and all Settling Parties shall support a ruling that PG&E has complied with all those conditions that permit the termination of the license for Project No. 606, and recommend that PG&E be allowed to withdraw its Proposed Decommissioning Plan.

Sec. 11. At such time as Evergreen Shasta accepts the exemptions granted by the Commission and PG&E has complied with all other conditions attendant to its surrender of the Project No. 606 license, the Project Property shall be transferred to Evergreen Shasta, and PG&E shall receive the payment stated in Section 5 (as adjusted, if necessary, under Section 13) either pursuant to the letter of credit or from amounts held in escrow, or directly from Evergreen Shasta.

Sec. 12. Within 30 days after a Settlement and Waiver Order consistent with Section 4.1 becomes final, Evergreen Shasta shall notify PG&E whether it is willing to enter into two power purchase agreements for the output of the Kilarc and Cow Creek Developments, based on the form of PG&E's standard Power Purchase Agreement for Small Renewable Generation, and at a 25-year fixed rate of 10.852 cents per kWh, consistent with the Baseload Market Price Referent ("MPR") adopted by the California Public Utilities Commission in 2009 for Small Renewable Generators beginning deliveries in 2012. The Settling Parties will, if requested by Evergreen Shasta, support a request that PG&E be required to enter into such standard Agreements with Evergreen Shasta as a condition of surrender in any Commission order approving the surrender by PG&E of its Project No. 606 license. The assumption that the Commission will make this condition a part of any Order approving the surrender of the Project No. 606 license is a necessary and essential element of this Offer of Settlement.

Sec. 13. Evergreen Shasta shall request that the Commission include as a condition of any Order approving the surrender by PG&E of its Project No. 606 license, that at least 90 days prior to any transfer of the Project Property for the price agreed to herein, PG&E shall disclose to Evergreen Shasta any defects or limitations in the equipment, facilities, or title to

the properties of which it is aware, and make such disclosure in writing, and further, where such defects or limitations would require an amount in excess of \$25,000 to repair or replace consistent with good operating practice, the transfer price shall be negotiated downwards to reflect the cost of such repairs or limitations. This provision and the assumption that PG&E shall be required to make disclosures as set forth are considered necessary and essential conditions of any Commission Order approving the surrender of the Project 606 license by PG&E and this Offer of Settlement.

Sec. 14. The Settling Parties agree to release PG&E from any claims related to the relicensing and surrender of the Kilarc-Cow Creek Project upon the transfer of the Project Property and the acceptance by Evergreen Shasta of the exemptions. These claims include claims based on water delivery to the Abbott Ditch, including any responsibility for PG&E to provide for a new diversion if the historical delivery point for the Abbott Ditch Users becomes unusable, the impacts of de-watering Hooten Gulch, the loss of the Poulton Project, FERC Project No. 6594, the loss to the County of recreation facilities with handicap access, groundwater impacts, and the loss of a reservoir for fire suppression, associated with PG&E's Proposed Decommissioning Plan.

#### **PART IV**

##### **Support for This Offer of Settlement**

Sec. 15. The Settling Parties agree to support this Offer of Settlement before the Commission, the CPUC, the SWRCB, and any other pertinent regulatory agency.

Sec. 16. The Settling Parties agree to refrain from advocating positions in the Kilarc-Cow Creek Project relicensing/surrender proceeding, any Commission proceeding on Evergreen Shasta's Exemption Applications for the Kilarc and Cow Creek Developments,

and any appeal of either of those proceedings, that are inconsistent with the goals of this Offer of Settlement.

## **PART V**

### **Continuing FERC Jurisdiction**

Sec. 17. The Settling Parties agree that the Commission should continue to retain jurisdiction over this Offer of Settlement at all times until the latest of: (1) exemptions or their equivalent, substantially as described in Part III, are issued to Evergreen Shasta by the Commission and accepted by Evergreen Shasta, and all obligations under this Offer of Settlement have been met; or (2) the conclusion of any litigation in this proceeding at the Commission or on appeal of a Commission decision or decisions.

Sec. 18. To the extent that there are residual contractual obligations associated with this Offer of Settlement that the Commission cannot or will not properly address, a California court in Shasta County shall have jurisdiction.

## **PART VI**

### **Other Provisions**

Sec. 19. This Offer of Settlement shall terminate and all Parties shall be released from any obligations hereunder at such time as the Commission issues a final Order, and such Order becomes final and not subject to appeal, either: (a) approving PG&E's application to surrender its license and decommission the Kilarc-Cow Creek Project, on such terms as would make achieving the purposes of this Offer of Settlement impossible; (b) rejecting this Offer of Settlement; (c) granting exemptions to Evergreen Shasta consistent with the terms of this Offer of Settlement; or (d) denying one or both of Evergreen Shasta's Exemption Applications.



Sec. 20. Nothing in this Offer of Settlement shall preclude any Party to this Offer of Settlement from appealing any Commission order or action in the appropriate courts or otherwise seeking relief from the Commission or any other agency, commission, or governmental entity with jurisdiction, provided such appeal or relief sought is consistent with the provisions and intent of this Offer of Settlement.

Sec. 21. Written Notice. All written notices to be given pursuant to this Offer of Settlement shall be sent by first-class mail postage prepaid, or overnight express service, to each Party. Notices shall be deemed to be given three business days after the date of mailing or on the date of receipt if sent by overnight express or other receipt-notification service. If notice is accomplished by fax or electronic mail, written notice shall be made by first class mail or overnight express service as soon as practicable thereafter.

Sec. 22. Contact Persons for Offer of Settlement. For the purposes of implementing this Offer of Settlement, the Parties agree that the individuals listed in Attachment B shall be the respective primary contact persons and all written notices shall be posed to these persons at the addresses listed on Attachment B. Notification of change in the contact person and/or address shall be made in writing and delivered to all other contact persons.

Sec. 23. Emergency Situations. If, as a result of an event or events that are beyond the reasonable control of the Settling Parties and without the fault of any Settling Party or any person or entity subject to the Settling Party's control, which event was not reasonably foreseeable and could not have been avoided by the exercise of due care by the Settling Party, such that a Settling Party is unable to comply with a provision under this Offer of Settlement, that non-complying Party shall make all reasonable efforts to promptly re-establish compliance. The non-complying Party shall notify the other Party or Parties (by

telephone, fax or e-mail, as soon as it is reasonably possible and practical to do so) but within a time no later than 24 hours of the non-complying Party's knowledge of the circumstances of the event that it believes caused the noncompliance event.

Sec. 24. Successors and Assigns. The Offer of Settlement shall bind the successors and assigns of the Parties. With respect to Parties that are Federal or State governmental agencies, "successors and assigns" shall mean the governmental agency that assumes the statutory mandates involved in this Offer of Settlement previously administered by the Party.

Sec. 25. No Precedential Effect. This Offer of Settlement represents a settlement of all issues relating to the relicensing and license surrender proceedings for the Kilarc-Cow Creek Project as between the Parties. No Party shall be deemed to have approved, accepted, agreed, or consented to any concept, theory, or principle underlying or supposed to underlie any term or condition in this Offer of Settlement.

Sec. 26. Costs. All Parties shall bear their own costs in implementing the Offer of Settlement, except as specifically provided otherwise in this Offer of Settlement.

Sec. 27. Withdrawal from this Offer of Settlement.

1. If any party to this Offer wishes to withdraw from the Offer, it shall provide at least 60 days' notice in writing to the other parties and state its intent to withdraw and the reasons for the withdrawal. All parties to this Offer shall convene within the 60 days' period to determine whether, in good faith, the Offer may be revised to accommodate the withdrawing party's needs. Failing such consensus, this Offer shall cease to be effective as to any party to this Offer and each party shall have the right to proceed on an individual basis in any ongoing proceeding relating to Project No. 606.

2. In addition to the withdrawal rights contained in Section 27.1, Evergreen Shasta may, at any time, provide written notice to the other Settling Parties indicating that Evergreen Shasta, in its sole discretion, has determined that obtaining exemptions for the Kilarc and Cow Creek Developments is not economically feasible. Upon such notice from Evergreen Shasta, this Offer of Settlement and any obligations undertaken by Evergreen Shasta in support of this Offer of Settlement shall terminate.

3. No party to this Offer of Settlement shall have the right to claim damages of any kind against any other Settling Party because of the exercise of this provision, and conversely, no party shall be denied a claim for damages or other claim arising from any separate agreement or contract between or among any of the parties to this Offer of Settlement relating to this Project or its related activities and transactions, or as against any third party in connection with Project No. 606.

Sec. 28. Federal or State Expenditures. Nothing in this Offer of Settlement shall obligate any Federal or State agency that is a Party to expend in any fiscal year in excess of appropriations made by the U.S. Congress or the State legislature as allocated to that agency for the purpose of administering its statutory obligations relating to the Project.

Sec. 29. Terms Not Severable. The terms and conditions of this Offer of Settlement are not severable. The Offer of Settlement is made and executed on the understanding that each term and condition is in consideration and support for each other term and condition, and each term and condition is a necessary part of the Offer of Settlement.

Sec. 30. Regulations and Statutes. References to regulations and laws in the Offer of Settlement are to existing or successor regulations or laws in effect as of the date of the action at issue.

Sec. 31. Headings. The headings contained in this Offer of Settlement are provided for reference purposes only and shall not affect in any way the meaning or interpretation of the Offer of Settlement.

Sec. 32. No Third-Party Beneficiary. This Offer of Settlement is for the sole benefit of the Parties and shall not be construed or interpreted to give to any person, other than the Parties hereto, any legal or equitable rights hereunder as a third-party beneficiary. Nothing in this Offer of Settlement shall be construed to authorize any such third party to maintain a suit in law or equity under this Offer of Settlement.

Sec. 33. Governing Law. The terms and conditions of this Offer of Settlement shall be governed by and construed in accordance with the Federal and California State statutory authority referenced or applicable.

Sec. 34. Execution. This Offer of Settlement may be executed in one or more counterparts, all of which shall be considered one and the same agreement. Each signatory to this Offer of Settlement hereby certifies that he or she is authorized to sign on behalf of the stated Party.

Sec. 35. Effective Date. This Offer of Settlement shall be effective as of the date specified below, provided that all parties below have executed this Offer of Settlement.

By: Bonnie Tetrick

For TETRICK RANCH

By: \_\_\_\_\_

For SIERRA PACIFIC INDUSTRIES, INC.

By: [Signature]

For EVERGREEN SHASTA POWER, LLC

By: \_\_\_\_\_

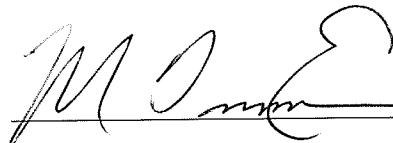
For SHASTA COUNTY

Dated: January 21, 2010

Sec. 35.        Effective Date. This Offer of Settlement shall be effective as of the date specified below, provided that all parties below have executed this Offer of Settlement.

By: \_\_\_\_\_

For TETRICK RANCH

By:  \_\_\_\_\_

For SIERRA PACIFIC INDUSTRIES, INC.

By: \_\_\_\_\_

For EVERGREEN SHASTA POWER, LLC

By: \_\_\_\_\_

For SHASTA COUNTY

Dated: January 21, 2010

Sec. 35. Effective Date. This Offer of Settlement shall be effective as of the date specified below, provided that all parties below have executed this Offer of Settlement.

By: \_\_\_\_\_


For TETRICK RANCH

By: \_\_\_\_\_

For SIERRA PACIFIC INDUSTRIES, INC.

By: \_\_\_\_\_

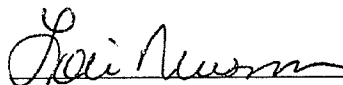
For EVERGREEN SHASTA POWER, LLC

By:  \_\_\_\_\_

For SHASTA COUNTY

Dated: January 21, 2010

ABBOTT DITCH USERS

By: 

For Donna Abbott

By: \_\_\_\_\_

For Art Abbott

By: \_\_\_\_\_

For Henrietta Farrell

By: \_\_\_\_\_

For Rick and Karen Sabanovich

By: \_\_\_\_\_

For Erik and Kristien Poole

By: \_\_\_\_\_

For Bob and Debbie Stanton

By: \_\_\_\_\_

For Richard and Dana Jones

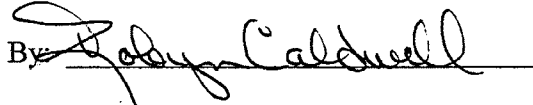
Dated: January 21, 2010



**ABBOTT DITCH USERS**

By: \_\_\_\_\_

For Donna Abbott

By:  \_\_\_\_\_

For Art Abbott

By: \_\_\_\_\_

For Henrietta Farrell

By: \_\_\_\_\_

For Rick and Karen Sabanovich

By: \_\_\_\_\_

For Erik and Kristien Poole

By: \_\_\_\_\_

For Bob and Debbie Stanton

By: \_\_\_\_\_

For Richard and Dana Jones

Dated: January 21, 2010

ABBOTT DITCH USERS

By: \_\_\_\_\_

For Donna Abbott

By: \_\_\_\_\_

For Art Abbott

By: *Shirley Farrell Babcock*

Trustee for Farrell 1989 Trust

By: \_\_\_\_\_

For Rick and Karen Sabanovich

By: \_\_\_\_\_

For Erik and Kristien Poole

By: \_\_\_\_\_

For Bob and Debbie Stanton

By: \_\_\_\_\_

For Richard and Dana Jones

Dated: JAN. 21, 2010

ABBOTT DITCH USERS

By: \_\_\_\_\_

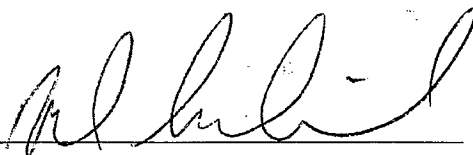
For Donna Abbott

By: \_\_\_\_\_

For Art Abbott

By: \_\_\_\_\_

For Henrietta Farrell

By:  \_\_\_\_\_

For Rick and Karen Sabanovich

By: \_\_\_\_\_

For Erik and Kristien Poole

By: \_\_\_\_\_

For Bob and Debbie Stanton

By: \_\_\_\_\_

For Richard and Dana Jones

Dated: January 21, 2010

ABBOTT DITCH USERS

By: \_\_\_\_\_

For Donna Abbott

By: \_\_\_\_\_

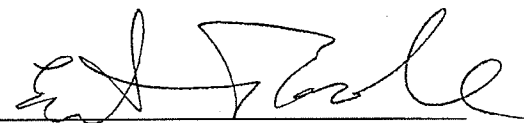
For Art Abbott

By: \_\_\_\_\_

For Henrietta Farrell

By: \_\_\_\_\_

For Rick and Karen Sabanovich

By:  \_\_\_\_\_

For Erik and Kristien Poole

By: \_\_\_\_\_

For Bob and Debbie Stanton

By: \_\_\_\_\_

For Richard and Dana Jones

Dated: 1/21/10

ABBOTT DITCH USERS

By: \_\_\_\_\_

For Donna Abbott

By: \_\_\_\_\_

For Art Abbott

By: \_\_\_\_\_

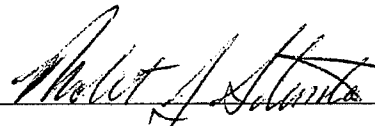
For Henrietta Farrell

By: \_\_\_\_\_

For Rick and Karen Sabanovich

By: \_\_\_\_\_

For Erik and Kristien Poole

By:  \_\_\_\_\_

For Bob and Debbie Stanton

ABBOTT DITCH USERS

By: .....

For Donna Abbott

By: .....

For Art Abbott

By: .....

For Henrietta Farrell

By: .....


For Rick and Karen Sabanewich

By: .....

For Erik and Kristien Peole

By: .....

For Bob and Debbie Stanton

  
By: .....

For Richard and Berna Jones  
Tulsa, OK

Dated: 1-20-10

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**ATTACHMENT A**

**Evergreen Shasta**  
**Preliminary Projected Operating Statement for Kilarc and Cow Creek Developments**

	Average Year PGE License	Average Year ESP <sup>1</sup>	Dry Year ESP <sup>2</sup>	Minimum Year ESP <sup>3</sup>
<b>Kilarc Powerhouse (MWh)</b>	19,100 <sup>4</sup>	18,500	12,950	9,250
<b>Cow Creek Powerhouse (MWh)</b>	12,000 <sup>4</sup>	11,000	7,700	5,500
<b>Total Annual Mwh - Kilarc/Cow Creek (MWh)</b>	31,100	29,500	20,650	14,750
<b>Price/Mwh (assumed 25-year fixed PPA)</b>	\$108.50	\$108.50	\$108.50	\$108.50
<b>Gross Annual Revenue (\$)</b>	3,374,350	3,200,750	2,240,525	1,600,375
<b>Operations and Maintenance<sup>5</sup> (\$)</b>	1,364,400	1,358,000	1,322,600	1,299,000
<b>Habitat Restoration/Ditch Maintenance – 5 mils/kWh (\$)</b>	155,500	147,500	103,250	73,750
<b>Capital Expenditures Reserve (\$)<sup>6</sup></b>	311,000	295,000	206,500	147,500
<b>Operating Reserve (\$)<sup>7</sup></b>	622,000	590,000	206,500	0
<b>Non-operating Expenses &amp; Contingency (\$)<sup>8</sup></b>	160,000	160,000	160,000	160,000
<b>Total Expense Including Reserves (\$)</b>	2,612,900	2,550,500	1,998,850	1,680,250
<b>Net Revenue Before Debt Service, Taxes, Depreciation, and Return on Capital (\$)</b>	761,450	650,250	241,675	(79,875)

<sup>1</sup> An “Average Year” was derived based on average monthly flows, calculated from data for the past 50 years. PG&E Response to FERC Additional Information Request, Attachment A (filed Dec. 23, 2009), *available at* eLibrary Accession No. 20091223-5141; Application for New License, PG&E Kilarc-Cow Creek Hydroelectric [sic] Project Relicensing (FERC No. 606), First Stage Consultation Package at 5-3 to 5-24 (Sections 5.3, 5.5) (filed July 1, 2002) (“2002 Consultation Package”), *available at* eLibrary Accession No. 20020705-0298. Flow and rainfall data are correlated. *See* 2002 Consultation Package at 3-2 to 3-5 (Section 3.2.1), 3-6 to 3-10 (Section 3.3).

<sup>2</sup> A “Dry Year” is considered less than 70% of the Average Year, and has occurred for 16 of the past 50 years.

<sup>3</sup> A “Minimum Year” is considered 50% of the Average Year, and has occurred for 6 of the past 50 years.

<sup>4</sup> 2002 Consultation Package at 3-2 (Section 3.2.1), 3-6 (Section 3.3.1).

<sup>5</sup> ESP estimated operating expenses, including but not limited to, management, maintenance, payroll, repairs, consultants, fees, permits, park and road maintenance, and property taxes.

<sup>6</sup> A \$10 /MWh reserve for major repairs and/or upgrades to physical assets such as turbines, generators, penstocks, diversion structures, or major electrical systems.

<sup>7</sup> A \$20/MWh reserve to provide financial stability for operating net losses that may occur during dry and/or minimum years; a \$10/MWh Operating Reserve is included in the Dry Year calculation, and zero Operating Reserves are included in the calculation for Minimum Year.

<sup>8</sup> Expenses incurred that are not directly related to the normal operating expenses or activities.



## NOTES

This Table provides an overview of projected operations comparing:

- 1) “Average Year PGE License” – Operations using the current instream flow requirements (the minimum flows included in the terms and conditions of PG&E’s expired license for Project No. 606);
- 2) “Average Year ESP” – Operations using the Evergreen Shasta Power, LLC (“ESP”) proposal of increasing the minimum instream flow per the protocols proposed in the Offer of Settlement;
- 3) “Dry Year ESP” – The effect on the ESP operations in a dry year (70% of average), based on average rainfall data and stream flow data from the past 50 years; and
- 4) “Minimum Year ESP” – The effect on the ESP operations in a minimum year (50% of average), based on average rainfall and stream flow data from the past 50 years.

The Table provides revenue projections for the Offer of Settlement proposal, based upon the increased minimum flow protocols and a reduction in estimated energy production. Power generation estimates for the Offer of Settlement proposal are based on the historical generation data for Project No. 606, adjusted to reflect the estimated effect of the Offer of Settlement’s proposed changes to the historical minimum instream flow requirements.

The most significant percentage increases included in the minimum flows proposed by the Offer of Settlement occur during the months of July, August, September, and October, the secondary diversion season when the total amount of water in the Cow Creek system is naturally very low. When these changes are averaged for each Development with the primary diversion season, December-June, the annual average amount of flow diverted from Old Cow Creek to the Kilarc Powerhouse is approximately 1.1 cfs less than the amount allowed to be diverted under the existing PG&E license; on South Cow Creek, the annual average amount of flow diverted to the Cow Creek Powerhouse is approximately 1.9 cfs less than the amount allowed to be diverted under the existing PG&E license. These reductions equate to an annual energy production loss from both Developments of an estimated 1.5 GWh. Based on PG&E’s reported historical annual average generation of 31 GWh, this 5% percent reduction corresponds to an annual average power production of approximately 29.5 GWh.

The revenue estimates in the Table also assume, consistent with a condition of the Offer of Settlement, that the output of the Kilarc and Cow Creek Developments will be sold under a fixed rate, 25-year power purchase agreement at the current published Baseload Market Price Referent (“MPR”) price adopted by the California Public Utilities Commission for Small Renewable Generators beginning deliveries in 2012. Based on this price, the estimated decrease in annual generation due to increased minimum flow requirements will result in lost revenue of

**Attachment A**

approximately \$162,750 per year for the next 25 years. This represents a total of \$4,068,750 that will be forfeited and unavailable as a result of increasing the minimum flow requirements.

The expenses are an estimate derived from other hydroelectric plants and facilities ESP and its partners and affiliates own and operate in California. Due to the higher elevations, flumes, ditches, and park and road maintenance requirements unique to these Developments, ESP has adjusted the expenses accordingly. Other expenses budgeted include a payment to ditch maintenance and habitat restoration in the watershed. This payment will be made to the Shasta County Department of Resource Management or such other local governmental entity, to a trust managed by such local governmental entity, or to a trust approved by Shasta County, and invested into watershed habitat restoration and ditch management. The payment will increase or decrease, dependent upon power production.

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**ATTACHMENT B**

## CONTACTS INFORMATION

### *For Tetrick Ranch:*

Bonnie Tetrick  
Mail Address: 27500 S. Cow Creek Road  
Millville, CA 96062-9708  
Tel. No.: (530) 547-4780  
e-mail: btetrick@frontiernet.net

### *For the Abbott Ditch Users:*

Erik Poole and Kristien Poole  
Mail Address: 26526 South Cow Creek Road  
Millville, CA 96062  
Tel. No.: (530) 547-5464  
e-mail: epoole@gmail.com

Donna Abbott  
Mail Address: c/o Ken and Lori Newsom  
P.O. Box 851  
Palo Cedro, CA 96073  
Tel. No.: (530) 547-3376  
e-mail: newsom@snowcrest.com

Art Abbott  
Mail Address: 27206 South Cow Creek Road  
Millville, CA 96062  
Tel. No.: (530) 547-4881  
e-mail: none

Trustee for Farrell 1989 Trust  
Mail Address: Virgil & Henrietta Farrell 1989 Living Trust  
Sandra Farrell Blalock, Trustee  
PO Box 188  
Millville, Ca 96062  
Tel. No.: (530) 547-5726 or (530) 515-2326  
e-mail: sandeeb@snowcrest.net

Rick and Karen Sabanovich  
Mail Address: P.O. Box 939  
Palo Cedro, CA 96073  
Tel. No.: (530) 547-5418  
e-mail: lvtreez@aol.com

Bob and Debbie Stanton  
Mail Address: 26948 South Cow Creek Road  
Millville, CA 96062  
Tel. No.: (530) 547-4001  
e-mail: bnotnats@aol.com

Richard and Dana Jones  
Mail Address: 26966 South Cow Creek Road  
Millville, CA 96062  
Tel. No.: (530) 547-4678  
e-mail: dj4678@frontiernet.net

*For Shasta County:*

Russ Mull, Director of Resource Management  
Department of Resource Management  
Shasta County  
Mail Address: 1855 Placer Street  
Redding, CA 96001  
Tel. No.: (530) 225-5789  
e-mail: scdrm@snowcrest.net

Michal A. Ralston, Interim County Counsel  
Mail Address: 1450 Court St., Suite 332  
Redding, CA 96001-1675  
Tel. No.: (530) 225-5711  
e-mail: mralston@co.shasta.ca.us

*For Sierra Pacific Industries, Inc.:*

Mark Emmerson, Chief Financial Officer  
Mail Address: P.O. Box 496028  
Redding, CA 96049  
Tel. No.: (530) 378-8000  
e-mail: memmerson@spi-ind.com

*For Evergreen Shasta LLC:*

Steve Tetrick  
Mail Address: 27500 S. Cow Creek Road  
Millville, CA 96062-9708  
Tel. No.: (530) 547-4780  
e-mail: stetrick@frontiernet.net

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## **CERTIFICATE OF SERVICE**

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 22nd day of January, 2010

/s/ Katharine M. Mapes

Katharine M. Mapes

Law Offices of:

Spiegel & McDiarmid LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

Document Content(s)

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