



a collaboration of Davis Hydro LLC  
& Sackheim Consulting  
5096 Cocoa Palm Way  
Fair Oaks, CA 95628

August 10, 2010

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 – 1st Street, NE, Mail Code PJ-12.3  
Washington, DC 20426

*filed electronically*

Ref: Kilarc-Cow Creek Hydroelectric Project, FERC No. 606-027  
Application for Surrender of License by Licensee Pacific Gas and Electric Company  
Re: Need for the FERC to Provide Leadership in National Environmental Policy Act  
Implementation

Dear Ms. Bose:

We are very pleased with your staff's responsiveness to concerns expressed by community stakeholders at the July 14, 2010 hearing<sup>1</sup> on the draft Environmental Impact Statement (EIS) for the referenced project, notably resulting in the scheduling of another meeting much closer to the Kilarc Development on August 17, 2010,<sup>2</sup> before the August 25, 2010 close of the comment period.<sup>3</sup> We are hopeful that this is an indication that the FERC is moving toward the type and breadth of analysis that has repeatedly been requested by community stakeholders and the entities that propose to take responsibility for facilities upon PG&E's license surrender.

We are hopeful that this is but the first step in encouraging all parties to provide the feedback on the draft EIS that is necessary before the Federal Energy Regulatory Commission (FERC) can make the best decision possible with regard to the future disposition of the hydropower facilities upon Pacific Gas and Electric Company's

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<sup>1</sup> Transcript available as FERC Accession No. 20100714-4022 or directly at [http://elibrary-backup.ferc.gov/0/idmws/file\\_list.asp?document\\_id=13836091](http://elibrary-backup.ferc.gov/0/idmws/file_list.asp?document_id=13836091)

<sup>2</sup> Notice available as FERC Accession No. 20100729-3045 or directly at [http://elibrary-backup.ferc.gov/0/idmws/file\\_list.asp?document\\_id=13836039](http://elibrary-backup.ferc.gov/0/idmws/file_list.asp?document_id=13836039)

<sup>3</sup> Notice of extension of comment period available as FERC Accession No. 20100701-3022 or directly at [http://elibrary-backup.ferc.gov/0/idmws/file\\_list.asp?document\\_id=13829457](http://elibrary-backup.ferc.gov/0/idmws/file_list.asp?document_id=13829457)

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(PG&E's) license surrender. As reflected in my testimony at the first hearing,<sup>4</sup> FERC staff did not reference the environmental analysis and conclusions when making their recommendation in the draft EIS, for approving the proposed project rather than an environmentally superior alternative that would avoid dismantling of facilities. No overriding consideration has been identified for choosing an alternative other than the environmentally superior alternative, and a sound environmental analysis with input from other federal and state agency experts is required.

We were disappointed that the only agency to attend and speak at the first hearing on the draft EIS was the California State Water Resources Control Board (SWRCB). We appreciate that other agencies have indicated their intent to submit written comments before the August 25, 2010 close of the comment period. We recognize that public agencies have several levels of internal review before publicizing their position in any proceeding, and these agencies respond in the manner solicited by the lead agency that is responsible for National Environmental Policy Act (NEPA) compliance and approving a project, in this case the FERC. Consequently, the FERC needs to take the lead in clearly soliciting feedback on an appropriate set of project alternatives.

We are hopeful that the resource agencies may take the initiative to provide a comprehensive review of the analysis performed by the FERC in the draft EIS, perhaps even expanding to alternatives proposed but not addressed, rather than simply concurring with FERC staff recommendations and ignoring the environmental analysis as FERC staff has done.

In summary, KC LLC continues to support the efforts of the FERC to render a decision regarding the preferred license surrender plan based on the analysis of the starting set of five alternatives we presented in FERC Accession No. 20100222-5135<sup>5</sup> and within the regulatory procedures established for such purpose. We believe that, at a minimum,

≈ the FERC should release a second draft EIS,

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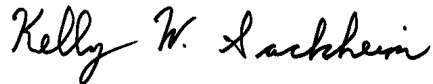
<sup>4</sup> Pages 87 through 95 of the transcript identified in footnote 1 of this letter

<sup>5</sup> Available directly at [http://elibrary-backup.ferc.gov:0/idmws/file\\_list.asp?document\\_id=13795169](http://elibrary-backup.ferc.gov:0/idmws/file_list.asp?document_id=13795169)

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- ≈ the FERC should disclose the alternatives to be analyzed in the second draft EIS and provide an opportunity for all parties to provide input to this analysis before its release, and
- ≈ until the conclusion of the environmental review, all staff recommendations should be based on the environmental analysis only.

Respectfully,



Kelly W. Sackheim, Principal

KC Hydro, a partnership of Davis Hydro LLC and Sackheim Consulting

Cc: augmented P-606 e-mail list