

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 77-000--California
Potter Valley Hydroelectric Project
Pacific Gas and Electric Company

May 11, 2022

VIA FERC Service

Jan Nimick, Vice President
Pacific Gas and Electric Company
Mail Code: N11E
P.O. Box 770000
San Francisco, California 94105

Subject: Request for plan and schedule for surrender application and response to
National Marine Fisheries Service's March 17, 2022 filing

Dear Mr. Nimick:

This letter regards the Potter Valley Hydroelectric Project No. 77.¹ The project is located on the Eel and East Fork Russian Rivers, in Lake and Mendocino Counties, California. The Commission issued a license for the project on October 4, 1983. The license expired on April 14, 2022. On April 21, 2022, the Commission issued a notice of authorization for continued project operation.

Background

On April 6, 2017, you filed a Notice of Intent (NOI) and Pre-Application Document (PAD) to relicense the project. On January 25, 2019, you withdrew your NOI and PAD, which became effective on February 11, 2019. On March 1, 2019, the Commission issued a notice soliciting interest from other parties to file NOIs and PADs, and requests to complete the remaining pre-filing stages of the integrated licensing process (ILP).

¹ *Pacific Gas and Electric Company*, 25 FERC ¶ 61,010 (1983).

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On June 28, 2019, the NOI Parties² filed an NOI to file an application for new license for the project. On August 1, 2019, the Commission issued public notice of the NOI Parties' intent to continue the licensing process and file a final license application by April 14, 2022.

On September 2, 2021, the NOI Parties filed a request that the Commission place in abeyance the schedule for the ILP until May 31, 2022. By letter dated September 23, 2021, Commission staff reiterated the April 14, 2022 deadline to file a license application for the project. Ultimately, the NOI Parties did not file a license application. However, on April 15, 2022, PVP 77 LLC (PVP) filed a license application that Commission staff rejected as untimely and patently deficient by letter issued April 22, 2022.³

Request for Plan and Schedule for Surrender Application

Given your withdrawal of the NOI and PAD in 2019, and that no other entity filed an adequate license application within the timeframe allowed, it is necessary that you provide a plan and schedule to file a surrender application⁴ with the Commission.

In order for you to provide an acceptable plan and schedule, your surrender application⁵ must address and include: (1) a decommissioning plan for the project; (2) whether any ground disturbance would occur with decommissioning; (3) any environmental effects expected from the surrender of the project and measures you would implement to minimize those environmental effects; and (4) written documentation of consultation with relevant federal and state resource agencies, affected Indian Tribes, as

² The NOI Parties are proxies for a new Regional Entity that intended to be the license applicant for the project. The Regional Entity, once formed under California law, would supplant the NOI Parties in the licensing proceeding. The NOI Parties include Mendocino County Inland Water Agency and Power Commission; Sonoma County Water Agency; California Trout, Inc.; County of Humboldt, California; and the Round Valley Indian Tribes.

³ On April 25, 2022, PVP filed a request for rehearing of Commission staff's April 22, 2022 letter. Review of this request is pending.

⁴ See 18 CFR 6.1 and 6.2 of the Commission's regulations.

⁵ For more information on what to include in your application, please visit: <https://www.ferc.gov/industries-data/hydropower/administration-and-compliance/how-surrender-license-or-exemption>.

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well as any other entities, such as non-governmental organizations, that may be interested in the surrender of the project.⁶

Documentation of consultation should include your letter initiating consultation with the relevant federal and state resource agencies, and interested non-governmental organizations and Indian Tribes, any responses received from those entities, and your response to any comments received. Resource agencies and any other interested parties should be given a minimum of 30 days to provide comments on your application.

We note that several species listed for protection under the Endangered Species Act (ESA) occur in the project area and that historic and cultural resources may be affected by surrender of the project. We ask that you consider requesting designation as our non-federal representative for the purposes of consultation with the California State Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act, and for the purposes of consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA.

NMFS's March 17, 2022 Filing

On March 17, 2022,⁷ NMFS filed a letter requesting that the Commission: (1) identify any areas of concern and remediation regarding reasonable and prudent alternatives (RPAs) included in a NMFS's November 26, 2002 Biological Opinion (BO);⁸ (2) identify current project activities not previously identified in the BO where incidental take is unauthorized; (3) consider interim protective measures necessary to protect listed species; and (4) reinstate consultation under section 7 of the ESA, as well as the Essential Fish Habitat provisions of section 305(b) of the Magnuson-Steven's Fishery Conservation and Management Act (MSA).

NMFS states that the 2002 BO identified RPAs and incidental take authorization for a specific 20-year term that expired on April 14, 2022. In addition, NMFS suggests that based upon current information the project is causing take of ESA-listed fish in a manner not anticipated or addressed in the 2002 BO. Specifically, NMFS identifies the

⁶ See 18 CFR 6.8 of the Commission's regulations.

⁷ NMFS's letter can be accessed using this link:
https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220317-5064&optimized=false

⁸ This BO was filed with the Commission on December 2, 2002.

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RPA summer flow component and suggests that juvenile steelhead trout have continued to experience reduced production below Scott Dam primarily due to unfavorable summer habitat conditions caused by elevated water temperatures in outflow from Lake Pillsbury, as well as predation from invasive species. NMFS suggests that specific activities not addressed in the 2002 BO include Cape Horn Dam, its infrastructure, fishway maintenance, and flow operations. Additionally, NMFS suggests that the project adversely affects Habitat Areas of Particular Concern for federally managed species pursuant to the Pacific Coast Salmon Fishery Management Plan through its reservoir and flow schedule and effects on complex channels and floodplains, thermal refugia, and spawning habitat.

Citing procedural complexities, NMFS suggests that the Commission amend the license to incorporate eight interim protective measures, which NMFS believes are necessary to minimize and avoid take of ESA-listed salmonids pending a final determination regarding the future of the project.

Request for Response

We request a response to this letter that includes (1) a plan and schedule for a surrender application; and (2) a response to NMFS's March 17, 2022 letter providing recommended interim measures and requesting reinitiation of consultation under ESA and MSA. We note that, to the extent you are not willing to adopt NMFS's proposed interim measures by filing a voluntary amendment application, the Commission will be required to consider whether there are sufficient grounds to start a proceeding to reopen and amend the license to require these measures. Your response is due no later than 60 days of the date of this letter.

The Commission strongly encourages electronic filing. Please file the requested response using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-77-000.

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Thank you for your cooperation. If you have any questions regarding this matter, please contact Diana Shannon at (202) 502-6136 or diana.shannon@ferc.gov.

Sincerely,

A handwritten signature in black ink that reads "Shana M Wiseman". The signature is written in a cursive, flowing style.

Shana Wiseman, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

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