

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

August 15, 2022

Via FERC Service

Alecia Van Atta
Assistant Regional Administrator, California Coastal Office
National Marine Fisheries Service, West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

Subject: Potter Valley Project Operations and ESA and EFH Consultation

Dear Ms. Van Atta:

This letter acknowledges receipt of your March 17, 2022, filing regarding consultation under the Endangered Species Act (ESA) and the Essential Fish Habitat (EFH) provisions of section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for operations at 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.

March 17, 2022 Letter

In your March 17 letter, you state that there is insufficient coverage under the ESA for incidental take of listed salmonids and adverse effects to Pacific Coast Salmon EFH resulting from operations of the project. You state the purpose of your letter is to: (1) identify areas of concern and remediation regarding specific reasonable and prudent alternatives (RPAs) included in NMFS's November 26, 2002 Biological Opinion (2002 BO); (2) identify current activities not identified in 2002 BO, where you deem incidental

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

take to be unauthorized; (3) request the Commission consider requiring eight interim protective measures until formal ESA consultation can be completed for the project as a whole; and (4) recommend that the Commission reinitiate consultation under section 7 of the ESA and the EFH provisions of section 305(b) of the MSA on actions currently within the Commission's discretion.

Further, you indicate that the 2002 BO elapsed on April 14, 2022. You note that ESA coverage being limited to a 20-year period was a central component of the 2002 BO, and that you relied upon this 20-year period to (1) assess the effects of the proposed action; (2) develop the RPAs necessary to avoid jeopardy and the destruction or adverse modification of critical habitat; and (3) evaluate the effectiveness of the RPAs over the expected life of the proposed action. You conclude the project is causing take of ESA-listed salmonids in a manner not anticipated in the 2002 BO and from activities not described in the document.

Your letter recommends the Commission consider interim measures to limit potential take by project activities that you state were not addressed in the 2002 BO which you believe necessitate reinitiated consultation. Specifically, you express concern over the summer flow component of the RPA. Your proposed interim measures also include implementation of the Cape Horn Fish Passage Facility winter operations procedures, continuation of the Commission's Order Approving Temporary Operation of the Sediment Exclusion Doors, reconsideration of water temperature management, reevaluation of Lake Pillsbury releases to maintain a cold water pool to provide suitable summer rearing temperatures for salmonids, and reevaluation of water year classifications to better handle extreme drought conditions.

Discussion

By letter dated May 11, 2022, we requested the licensee respond to your March 17 letter. The licensee's response was filed on July 12, 2022. As Commission staff continue our review of the licensee's filing, we find that additional information and clarification from your agency is needed.

First, we wish to inform you that the conditions of the 2002 BO and its incidental take provisions, as well as all the other conditions of the license, remain in effect. Section 15(a)(1) of the Federal Power Act (FPA) requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the licensee under the terms and conditions of the prior license until a new license is issued, or the

project is otherwise disposed of.² The Commission granted the licensee an annual license as required by statute on April 21, 2022.³ Therefore, it is expected and required that the licensee will continue to fulfil its obligations under the 2002 BO,⁴ including providing NMFS annual reports regarding pikeminnow suppression, fish counts from the Eel and Russian Rivers, and water temperature reports related to the terms and conditions of the BO and its license.

Second, with regards to the interim measures you propose, as we explained in our May 11, 2022 letter, the Commission can consider either (i) a voluntary amendment application (if the licensee agrees to these conditions) or (ii) initiating a proceeding to reopen the license, potentially amending the license to require these measures.⁵ In its July 12 letter, PG&E did not volunteer to file an amendment application to adopt your proposed interim measures. Accordingly, we now are evaluating whether there are sufficient grounds to initiate a proceeding to reopen the license.⁶

² 16 U.S.C. 808(a)(1). On July 8, 2022, PG&E submitted its plan and schedule for submitting an application to surrender its license.

³ *Notice of Authorization for Continued Project Operation*, 87 Fed. Reg. 25,011 (2022).

⁴ *Pacific Gas and Electric Company*, 106 FERC ¶ 61,065 (2004). The terms and conditions of the 2002 BO were added to the license with this order.

⁵ In footnote 2 of your March 17 letter, you note that the Commission has the authority to implement these interim protective measures under Standard Article 15, as well as license Article 46. Standard Article 15 requires the licensee, in part, to comply with such reasonable modifications of project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing. Article 46 of the license requires that the licensee continue to consult and cooperate with appropriate Federal, state, and other natural resources agencies for the protection and development of the environmental resources and values of the project area. The Commission reserves the right to require changes in the project works or operations that may be necessary to protect and enhance those resource and values.

⁶ We advise you that a reopening proceeding is a formal proceeding that is initiated by notice providing for an opportunity for hearing.

As we continue to consider this matter, additional information is warranted. Please file a response with the Commission that addresses the following:

- With regards to proposed interim measure 1: provide a timeline of your continued consultation since April 2021 with Commission staff, as well as the licensee (as our non-federal representative) with regards to winter operation of the Cape Horn fish ladder and protection of listed species.⁷ Please include any documentation regarding the Winter Operations Plan and operation of the sediment doors. Identify any outstanding issues.
- With regards to proposed interim measure 2: provide a response to the licensee's July 11, 2022 letter, pages 13-14, which summarizes current water temperature monitoring and the most recent 2022 report documenting that inflows to Lake Pillsbury are consistently warmer than temperatures monitored below Scott Dam.
- With regards to proposed interim measures 3, 4, and 5: provide a response to the licensee's July 11, 2022 letter, page 14, proposing a potential long-term variance of the RPA requirements for approval by the Commission, and the licensee's desire to document and address the project's beneficial contribution of cold water releases downstream, the operational limits of Lake Pillsbury and Scott Dam, and applicable water rights.
- With regards to proposed interim measure 6: provide data or other evidence supporting the need for changes to the plan approved by the Commission's March 3, 2005 order,⁸ which currently requires annual salmon carcass surveys in Tomki Creek and in the Eel River, as well as funding for California Department of Fish and Wildlife stock rescue programs. Include in your response your support for necessary changes to this approved plan.
- With regards to interim measure 8: provide your rationale for the need to require additional monitoring of cumulative inflow to Lake Pillsbury. Please respond to the licensee's description of its current method of monitoring inflow, described in its July 11, 2022 letter, page 15, and identify any deficiencies related to the ongoing monitoring. Provide a clear

⁷ *Pacific Gas and Electric Company*, 177 FERC ¶ 62,136 (2021). See also *Pacific Gas and Electric Company*, 174 FERC ¶ 62,181 (2021). The licensee was designated our non-federal representative for informal consultation by letter dated April 20, 2021, and Commission staff consider consultation ongoing for winter operation of the Cape Horn Fish Passage Facility.

⁸ *Pacific Gas and Electric Company*, 110 FERC ¶ 62,205 (2005).

link between your suggested monitoring and the protection of listed salmonid species.

With regards to the proposed interim measure 7, in which you recommend the licensee consult with your agency, the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and the Round Valley Indian Tribes, and continue to implement the annual Sacramento Pikeminnow Suppression Plan,⁹ because the requirements of this approved plan remain in effect (as discussed above), Commission staff believe that no further action is warranted. If you disagree after the clarification provided in this letter, please provide a description of any needed changes, as well as support of those changes, to the approved plan.

Please file a response with the Commission that includes the above information within 60 days of the date of this letter. The Commission strongly encourages electronic filing. Please file the requested information 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.

We appreciate your assistance in protection of listed species as we work towards the proposed surrender of the project. Thank you for your cooperation. If you have any questions, please contact Diana Shannon at (202) 502-6136 or diana.shannon@ferc.gov.

Sincerely,



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

⁹ *Pacific Gas and Electric Company*, 113 FERC ¶ 62,149 (2005).

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cc: Via FERC Service

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