
State Water Resources Control Board

JUL 27 2018

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

Dear Secretary Bose:

COMMENTS ON PROPOSED STUDY PLANS FOR KERCKHOFF HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 96; FRESNO AND MADERA COUNTIES

Pacific Gas and Electric Company (PG&E or Licensee) owns and operates the Kerckhoff Hydroelectric Project (Project), also known as Federal Energy Regulatory Commission (Commission) Project No. 96. On November 16, 2017, PG&E filed the Project Pre-Application Document (PAD) with the Commission. The PAD included draft proposed study plans for the Project. On March 16, 2018, State Water Board staff provided comments on the PAD and PG&E's draft proposed study plans, and requested three additional relicensing studies. On April 30, 2018, PG&E filed with the Commission, the Proposed Study Plan for the Project. On May 21, 2018, PG&E held a Proposed Study Plan Meeting¹ to: (i) discuss relicensing participant² comments on draft proposed study plans; and (ii) initiate consultation on the Proposed Study Plan. Since April 30, 2018, PG&E has held multiple meetings with relicensing participants to resolve disputes on the Proposed Study Plan. State Water Board staff appreciates PG&E's initiative and investment of time to reach early agreement on study plans for the Project.

On November 19, 2013, a Memorandum of Understanding (MOU)³ was executed between the Commission and State Water Board to facilitate the issuance of environmental documents that satisfy the legal requirements of both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) and meet the Commission's and State Water Board's needs. Item 3 of the *Pre-Application Filing Activities Under the Integrated Licensing Process (ILP)* section of the MOU applies to the current phase of the Project. In accordance with Item 3(a) of the MOU, at the Proposed Study Plan Meeting on May 21, 2018, staff from the Commission and the State Water Board discussed their respective study requests and attempted to reach

¹ The Proposed Study Plan Meeting is required per 18 Code of Federal Regulations (CFR) § 5.11(e).

² Relicensing participants for the Project include the State Water Board, Bureau of Land Management, California Department of Fish and Wildlife, National Park Service, American Whitewater, Tribes, and the public.

³ A copy of the MOU is available online at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/ferc_mou/index.shtml.

consensus on studies that meet the needs of the Commission for issuance of a license and the State Water Board for issuance of water quality certification.

In accordance with Item 3(b) of the MOU (to identify studies that are anticipated to meet the needs for issuance of water quality certification), State Water Board staff is providing the following comments on PG&E's Proposed Study Plan:

Comments 1: State Water Board staff has worked extensively with PG&E and relicensing participants to develop a study plan for the Project that will meet the information needs for issuance of water quality certification. Significant progress on the Proposed Study Plan has been made. Updates to the Proposed Study Plan (in track changes) are contained in Attachment A. Attachment A also contains studies: AQ-6 *Rare Aquatic Species* and WQ3- *Bioaccumulation*, which are studies requested by State Water Board staff (in response to PG&E's PAD filing) and subsequently included in the Proposed Study Plans.

Comment 2: Updates to the Proposed Study Plan (in clean version) are contained in Attachment B. Attachment B also contains study AQ7- *Benthic Macroinvertebrates*, which is a study requested by State Water Board staff (in response to PG&E's PAD filing), and subsequently developed by PG&E in consultation with relicensing participants.

It is State Water Board staff's understanding that PG&E will include the updated Proposed Study Plans contained in Attachment B, as written, in PG&E's filing of its Revised Study Plan⁴. Minor grammatical or format changes to these updated Proposed Study Plans may occur, but material changes are not anticipated. At this time, State Water Board staff anticipates that the updated Proposed Study Plans (contained in Attachment B) will meet information needs (for the resource areas addressed in the study plans) for issuance of water quality certification.

Comment 3: PG&E and relicensing participants have made notable progress on proposed studies REC 3 - *Recreation Visitor Use* and REC 4 - *Recreation Visitor Use Surveys*. However, there is disagreement whether to include the bypass reach (between Kerckhoff Dam and Kerckhoff Powerhouse 2) in the study area for proposed studies REC 3 and REC 4.

The beneficial uses for the Project area, as designated in the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (Basin Plan), include contact recreation; canoeing and rafting; and other noncontact recreation. Limited information is available on the timing, quantity, and types of public use/recreation that occurs in the bypass reach. This information is important to identify public access points/trails and safety concerns. State Water Board staff encourages PG&E to include the bypass reach in the study areas for REC 3 and REC 4 to provide information regarding whether the designated recreation-related beneficial uses in the bypass reach are adequately protected.

⁴ Per 18 CFR 5.13, PG&E is required to file with the Commission the Revised Study Plan within 30 days from the close of the comment period on the Proposed Study Plan.

Regulatory Authority

Before the Commission can issue a new license, the Licensee must obtain water quality certification, or waiver thereof, from the State Water Board pursuant to section 401(a)(1) of the federal Clean Water Act (CWA) (33 U.S.C. §1341(a)(1)). Section 401 of the CWA requires any applicant for a federal license or permit, which may result in any discharge to navigable waters, to obtain water quality certification or waiver from the State Water Board that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA, and other appropriate requirements of state law.

The State Water Board must evaluate the impacts of the Project on the associated water bodies to determine whether the Project complies with all applicable water quality objectives in the Basin Plan, and protects the designated beneficial uses. Water quality certification also may address a project's effects on public trust resources. In developing a water quality certification, the State Water Board looks not only at proposed modifications to project operations from the existing condition, but also on whether past, existing, or future operations may impair or degrade water quality.

PG&E must file an application for water quality certification once the Commission issues the Notice of Ready for Environmental Analysis for the Project. In addition to the Commission's information gathering process, the State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the application (Cal. Code Regs., tit. 23, § 3836). During the licensing process, State Water Board staff will continue to act in an advisory role to inform PG&E of the information necessary for a complete application for water quality certification. Filing requirements for an application for water quality certification are specified in California Code of Regulations, title 23, section 3856. State Water Board staff cannot prejudge the outcome of any proceeding before the State Water Board on an application for water quality certification.

If you have questions regarding this letter, please contact me at (916) 341-5408 or by email at Philip.Choy@waterboards.ca.gov. Written correspondence should be directed to: State Water Resources Control Board, Division of Water Rights - Water Quality Certification Program, Attn: Philip Choy, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

ORIGINAL SIGNED BY

Philip Choy, Environmental Scientist
Water Quality Certification Unit
Division of Water Rights

Enclosures: Attachment A – Updated Study Plans for the Kerckhoff Hydroelectric Project in Tracked Changes
Attachment B – Updated Study Plans for the Kerckhoff Hydroelectric Project in Clean Version

cc on next page.

cc (w/o enclosures):

Mr. Dean Gould
United States Forest Service
1600 Tollhouse Road
Clovis, CA 93611

Ms. Lisa Whitman
Pacific Gas and Electric Company
Mail Code: N13E
P.O. Box 770000
San Francisco, CA 94177

Ms. Dawn Alvarez
United States Forest Service
1323 Club Drive
Vallejo, CA 94592

Mr. Abimael León,
California Department of Fish and Wildlife
1130 East Shaw Avenue,
Fresno, CA 93710

Ms. Somer Shaw
Bureau of Land Management
3801 Pegasus Drive
Bakersfield, CA 93308

Ms. Debra Mahnke
CV Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706