



Annette Faraglia
Attorney at Law

Street/Courier Address:
Law Department
77 Beale Street, B30A
San Francisco, CA 94105

Mailing Address:
Mail Code B30A
P. O. Box 7442
San Francisco, CA 94120

415.973.7145
Fax: 415.973.5520
E-Mail: ARF3@pge.com

July 5, 2013

Via E-mail
TVallejo@waterboards.ca.gov

Ms. Tammy Vallejo
STATE WATER RESOURCES CONTROL BOARD
Water Quality Certification Program
P. O. Box 2000
Sacramento, CA 95812-2000

Re: *Comments on the Draft Memorandum of Understanding between the Federal Energy Regulatory Commission and the California State Water Resources Control Board Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California*

Dear Ms. Vallejo:

Pacific Gas and Electric Company ("PG&E" or "Company") appreciates the opportunity to provide comments on the Federal Energy Regulatory Commission ("Commission" or "FERC") and the California State Water Resources Control Board ("State Water Board") Draft Memorandum of Understanding Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California ("Draft MOU").

PG&E is one of the largest utilities in the United States providing energy to one in twenty Americans. The Company is committed to providing safe, affordable and reliable gas and electric service to its customers in a way that protects and enhances the surrounding environment. PG&E holds twenty-six FERC licenses for hydroelectric projects that provide the state of California with approximately 3,885 MW of power. Seven of these hydro projects are in relicensing. Consequently, PG&E has a strong interest in seeing improved coordination between the Commission and the State Water Board throughout the relicensing process.

PG&E is supportive of the agencies' efforts and believes the Draft MOU is a positive development. Having the SWRCB participate directly in development of study plans and preliminary license conditions, concurrently with all of the other involved agencies and stakeholders, should result in license conditions being implemented sooner, and at a lower cost for all concerned. PG&E has some concerns, comments, and suggestions for how to enhance the MOU's effectiveness, all of which are outlined below.



Ms. Tammy Vallejo
STATE WATER RESOURCES CONTROL BOARD
Water Quality Certification Program
July 5, 2013
Page 2

1. PG&E appreciates that most interaction between the State Water Board and FERC is in public meetings and filed documents; however, there are a number of instances where the State Water Board and FERC staff will be discussing things privately that are not strictly procedural. Referring to the Integrated Licensing Process (“ILP”) Flowchart included in the Draft MOU, examples of these instances include item 1 b. (*As part of the scoping meeting(s) (Box 4) the State Water Board and Commission will discuss and attempt to reach consensus on the proposed geographic scope of the studies.*) and item 5 (discussion on alternatives and analyses). PG&E notes that these sorts of private discussions may raise *ex parte* concerns if the State Water Board is an intervener in the FERC proceeding. PG&E suggests the final MOU address this matter by specifying that any State Water Board staff engaging in such discussions with FERC staff be “separated” staff that will not be involved in the State Water Board’s: (1) preparation of the CEQA document or filings at FERC in the proceeding; or (2) substantive consideration of PG&E’s water quality certification application. This “separated staff” approach preserves the ability of the State Water Board to participate as an intervener in the FERC proceeding while effectively dealing with the *ex parte* issue.

2. Section I, third paragraph, states: *the State Water Board will initiate consultation with the applicant to develop a three-party MOU (between the applicant, consultant and the State Water Board) for development of the CEQA document.* PG&E supports the State Water Board initiating consultation but also supports the concept of a target date for the three-party MOU’s completion. At present, the Draft MOU leaves an open-ended amount of time to execute the three-party MOU which could lead to delays. Regardless of when consultation is started, it is important the three-party MOU is developed and executed in a timely manner.

3. Item 3, paragraph d, states: *The Commission and the State Water Board recognize that, if the Commission’s Study Plan Determination excludes or modifies any study or studies identified by the State Water Board as necessary for water quality certification, including any studies necessary for CEQA compliance, the State Board may independently require additional study or studies.* While the Draft MOU notes that efforts will be made to request studies and information as early in the process as possible, PG&E has some concerns with this section because there are no apparent criteria for the State Water Board to meet prior to mandating additional studies. Also, if the State Water Board is acting independently from other state and federal resource agencies, and the applicant, these parties would effectively be excluded from the process. This could defeat the purpose of early coordination and result in delays and higher costs to the project (and ultimately, PG&E’s customers) without providing additional relevant information.



Ms. Tammy Vallejo
STATE WATER RESOURCES CONTROL BOARD
Water Quality Certification Program
July 5, 2013
Page 3

This concern is based on past experience. On the Upper North Fork Feather River Project, FERC Project No. 2105, more active engagement by the State Water Board with the Commission during relicensing would have increased efficiency and reduced costs. In this case, PG&E has paid the State Water Board's CEQA consultant over one million dollars for water quality modeling, operational modeling, and analysis that largely duplicated PG&E studies during relicensing. Had the State Water Board's requirements been identified earlier in the process, it would have saved at least five hundred thousand dollars in direct costs, and significantly reduced the time for this ongoing CEQA process and, ultimately, the implementation of new license conditions.

Therefore, to avoid duplicative studies and conflicting conditions, PG&E suggests that the final MOU contain a provision stating that, prior to ordering additional studies, the State Water Board will provide FERC - and the license applicant - with a record that describes why such additional studies are essential. Approval from the full Board should also be obtained before mandating such additional studies.

Finally, PG&E believes the justification for a particular study may be best evaluated using FERC's current ILP study plan criteria. These criteria are tested, and provide an appropriate and consistent framework to document the need for a particular study. Adopting the ILP study plan criteria ensures that any proposed study illustrates a clear project nexus and need.

4. Item 3.e specifies that: *Within 35 days of the Commission's Study Plan Determination (Box 10), the State Water Board may issue a letter notifying the applicant what additional studies the State Water Board anticipates will be necessary for the issuance of the water quality certification.* To ensure that a request for studies does not unnecessarily delay the process, PG&E recommends this provision be modified to say the State Water Board can issue a letter to the applicant requesting additional studies that meet the standard recommended above in Item 3.d, but only if the letter is sent *no later* than thirty-five (35) days after the FERC Study Plan Determination.

//

//

//

//



Ms. Tammy Vallejo
STATE WATER RESOURCES CONTROL BOARD
Water Quality Certification Program
July 5, 2013
Page 4


CONCLUSION

PG&E understands that the State Water Board and the Commission exerted great effort in producing the Draft MOU. PG&E very much appreciates the participation of all involved and looks forward to enhanced collaboration during the hydro licensing process.

If there are any questions regarding these comments please contact Alvin Thoma, Director of Hydro Licensing, Power Generation, at (415) 973-4466 or by e-mail at Alvin.Thoma@pge.com.

Very truly yours,

PACIFIC GAS AND ELECTRIC COMPANY

By: 
Alvin K. Thoma
Director of Hydro Licensing
Power Generation

By: 
Annette Faraglia
Attorney
Law Department

AF:AKT:bd

cc: Kimberly D. Bose, Secretary – Federal Energy Regulatory Commission