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May 19, 2003

Ms. Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D. C. 20426

Subject: **FOREST SERVICE COMMENTS TO THE FERC DEIS  
FOREST SERVICE REVISED PRELIMINARY 4(e) CONDITIONS  
PG&E – PIT 3, 4, and 5 HYDROELECTRIC PROJECT No. 233**

Dear Ms. Salas:

Enclosed for filing are the Forest Service's Comments on the Federal Energy Regulatory Commission's (FERC) Draft Environmental Impact Statement (DEIS), as well as the Revised Preliminary Terms and Conditions for inclusion in a new license for this project. These Revised Preliminary Terms and Conditions are being submitted as required by CFR 4.34(b)(4), and pursuant to Section 4(e) of the Federal Power Act.

The Pit River Collaborative Team (PRCT) has been actively meeting in recent months to review the numerous components of the Licensee's 2002 controlled flow study. These meetings have been very productive and provided interested parties with the draft results of many of the 2002 controlled flow studies to consider in the development of sound resource-based conditions for the next 30-50 year license term. These study results are discussed in more detail below.

This Forest Service response addresses various study results. Concerns specific to the use of older studies or, use of draft results of the controlled flow related studies include:

1. Some of the data relied on by the FERC in the DEIS, such as the 1984 IFIM data, has since been **shown to be incorrect**. PG&E recalculated this data and provided the new results after completion of the FERC's DEIS. The Forest Service's comments on this data set are in Appendix A-3.

2. Concurrently, in this response, comments are provided on individual components of PG&E's 2002 controlled flow studies. These studies are in various stages of completeness: from new draft studies being filed with FERC (to get them into the record for FERC's consideration) which have yet to incorporate interested party comments, to final draft studies in which interested parties' comments have been incorporated, to studies which are not yet released for consideration.

Until interested parties have received all of the 2002 controlled flow study components and had the opportunity to provide comments, discuss, and integrate the study components into a cohesive flow data record, the **results should not be used**. The FERC relied on incorrect 1984 IFIM results in its DEIS. The Forest Service is concerned that this same faulty data will be used as the basis for the FERC's final license terms and conditions. This could lead to the development of erroneous license conditions for a 30-50 year license term for critical flow regime issues. Additionally, the Forest Service notes that since the Draft EIS phase is complete, release of the Final EIS will incorporate study data without opportunity for comments by interested parties, thereby foreclosing on the opportunity to discuss new data for this relicense before being finalized by the FERC.

Public comments (from both Forest Service and the FERC public meetings) have been considered during the development of Forest Service Revised Preliminary 4(e) license conditions and DEIS comments. In order to further clarify the enclosed response to the DEIS, the Forest Service requests a "**clarification meeting**" with the FERC, as allowed under the Interagency Task Force proceedings. To be most effective, this meeting should follow the release of all of PG&E's flow data so that the data can be utilized in the discussions. The meeting objective would be to discuss this response, and more specifically, flow modeling differences with the FERC staff. It will be critical to fully understand variations in flow modeling approaches and their effects in the development of a workable flow regime.

The Forest Service response to the Draft EIS is composed of the following three sections, as described below:

**Enclosure 1** contains the Revised Preliminary 4(e) Terms and Conditions found to be necessary for the protection and utilization of the Shasta National Forest, as administered by the Lassen and Shasta-Trinity National Forests. In this enclosure, the Forest Service has modified many of the conditions to include public input, to be consistent with the FERC DEIS recommendations, and to consider the Project study data released after the October 9, 2002 Preliminary 4(e) submittal (to the extent that this draft material can be considered). However, additional critical data is still being received from the PG&E 2002 controlled flow studies which must be considered prior to providing the FERC with Final 4(e) terms and conditions related to flows.

Due to the lack of final information concerning flows and related resources, the Forest Service has chosen to keep the **instream flow and associated values generally the same as in the October 9, 2002 Preliminary 4(e) document**. The Forest Service did, however, clarify its intent, point out concerns with the FERC's interpretation of the

Forest Service proposed flow measures, and combine related conditions as recommended by the FERC. Final 4(e) conditions will be filed within 90 days of the FERC's Final EIS.

**Enclosure 2** contains Forest Service comments on the FERC DEIS. The comments, for the most part, address differences of interpretation, clarification, and introduction of new information. The Forest Service feels the DEIS addressed a broad spectrum of its concerns. The Forest Service appreciates this opportunity to further address remaining concerns.

**Enclosure 3** contains Appendices with detailed information of various types as described below:

- A Forest Service contractor reports (on behalf of the Forest Service) that provide comments on recently released PG&E 2002 controlled flow study results.
- B Documents to be incorporated into FERC's final EIS that will assist in the analysis of effects to Forest Service designated sensitive species, management indicator species, and survey and manage species. These documents include Biological Evaluations (BE) and reports on Management Indicator Species (MIS), and Survey and Manage Species (S&M).
- C Details, which may more appropriately be considered in later Plan development. The Forest Service understands that the FERC DEIS is by nature a broad document that requires specific plans to be developed by PG&E, in consultation with a variety of agencies, following license issuance. There are several reasons to provide this information to the FERC at this time:
  - To capture the information while it is still fresh from collaborative discussions, as a "tracking method", since many parties (including Forest Service specialists) may change during the year(s) following license issuance in which these plans are developed.
  - To provide the Licensee with a better understanding of the specifics of Forest Service license conditions, both to provide a clearer understanding of concerns, and to assist them in draft plan preparation.
  - To provide the opportunity for the FERC and Licensee to develop better estimates of Project-associated costs. For example, the February 25, 2003 PG&E submittal to FERC of "Updated Cost of Project Power" appears, in places, to have costs that greatly exceed Forest Service anticipated costs. This difference could be the result of a lack of understanding of Forest Service resource objectives.
- D Additional Information from a variety of sources.

### **Upstream water availability issue**

There is one final issue the Forest Service addresses here as general information, as well as in specific comments to FERC's DEIS. For the specific comments on this issue, please see Enclosure 2 (DEIS reference Pages 41-42 and 80-82) and the additional hydrologic analysis related to upstream water availability in Enclosure 3 (Appendix D-2).

As the FERC heard during public meetings for DEIS comments, upstream water availability is a complex issue. The Forest Service has attempted to synthesize and discuss some of the key points below concerning upstream water availability from the Forest Service perspective. It will take considerable collaborative discussion with involved parties and a clear understanding of all participants' roles and jurisdictions for complete resolution. In that regard, it would be helpful to the Forest Service to have a clearer understanding of the FERC's authorities and jurisdiction for this issue; possibly at the above proposed "clarification meeting". It would be preferable for parties to understand this issue before the release of the Final EIS.

**Key points of the upstream water quantity issue as understood currently by the FS:**

- The upper Pit River watershed has a finite water supply as defined by limited rainfall in Northeast California.
- Water rights on this river may be over allocated.
- Concerns about conflicts between power generation and agricultural use were first identified in 1921, prior to construction of the Pit 3/4/5 Project. (Jay Younger, South Fork Irrigation District, intends to submit into the record multiple historic letters with the District's comments).
- At the time the Project was constructed, agriculture and domestic use were identified as a priority use over power production.
- PG&E has senior water rights to many, but not all, of the roughly 1,400 upper Pit River water rights holders.
- There is a direct project nexus between upstream water availability and Project operations. The nexus is clear between those users whose diversion agreements are tied directly to the Pit 3 dam releases, but others are affected as well. This water supply issue is therefore not entirely a water rights issue.
- The majority of water going into the Pit 3/4/5 project is from Fall River and downstream sources (Burney, Hat, Clark Creeks, etc.), not from the Pit River above the Fall River. In most years the Pit River is dry between the upstream reaches and the Project during the dry summer months. (See FS water budget graphic, Appendix D-5, developed from PG&E Application flow data).
- There is NOT a 1:1 ratio between proposed flows in the downstream section (i.e. within the Project) and the upstream section. This means that **a 100 cubic feet per second (cfs) increase in Project instream flows (for example) does not equal a 100 cfs effect to upstream users.** See Appendix D-2 for a more thorough explanation of the upstream effects and Appendix D-5 for a water budget graphic that shows the location of inflow water to this Project.
- PG&E contractors, Gallo and Jensen from Chico State University, completed an economic report on the likely effects of increased Project instream flows on upstream water diverters. There are two components to this report: 1) hydrologic input provided by PG&E to Gallo and Jensen (which the Forest Service believes is based on insufficient hydrologic analysis) and 2) economic outputs generated by Gallo and Jensen based on the faulty flow data.
- Hydrologic input to the above report is being challenged by the Forest Service. See Appendix D-2 for a Forest Service analysis, which was presented to the PRCT on April 2, 2003.

- Although there is one report addressing upstream economic effects, there were no licensing studies conducted to address upstream environmental effects since the nexus between the project and upstream was not understood in 1999-2000, when studies were being requested and conducted. Representatives from Modoc County have very recently submitted upstream environmental information to the Forest Service to assist with this void. It is included in Appendix D-1 of this response.
- Currently, water in the Pit River Project is utilized in the following manner. (Percentages are based on average unimpaired annual flow in the Pit 5 reach of 2,400,000 ac-ft per year calculated from synthetic unimpaired data provided by PG&E for the Pit 5 reach.)
  - Upstream agriculture diverts 20,000-140,000 acre feet/year above the project or 0.8.% to 5.8% of total flows.
  - PG&E average power generation use is 2,000,000 acre feet/year or 83% of the total flows.
  - Current bypass flows of 150 cfs (108,000 acre/feet per year) for resources or 4.5% of flows.
- PG&E has stated if bypassed flows are increased to improve resources during relicensing by resource agencies, they will exercise their senior water rights against upstream water users, to protect the loss of these rights from “non-use”.
- PG&E has pursued upstream water rights issues with junior diverters since approximately 1985.
- Even if no additional flows were provided for resources (or even if current bypassed flows were dropped to 0 cfs), the water rights issue would not be resolved.
- PG&E shows a gross profit from this project of \$98,214,000 with costs of \$11,678,000 for a net annual profit of \$86,536,000 (PG&E Application Volume 3 of 9, Page H-26).
- Some of the upstream parties with junior water rights have agreements with PG&E, but the majority do not. There is a domino effect for low water years where those with agreements with PG&E pass on the lack of water to those without agreements or those with more junior water rights.
- The water quantity/availability issues on this project have not been resolved in its entire history (82 years since 1921).
- The State Water Resource Control Board (SWRCB) has authority for water rights in the State of California. The SWRCB also has the 401 water quality certification process for relicensing. The SWRCB’s involvement on this issue is vital to its resolution.

Discussion of key points from the Forest Service perspective:

As mentioned above, the Gallo and Jensen report was based on **hydrologic data with which the Forest Service disagrees** (see Appendix D-2), and resulted in economic loss estimates to the upstream counties that is being contested by multiple parties (some feel they are too high, others too low).

PG&E currently operates the project without benefit of any upstream water during the high summer electrical demand peak (when water is not available from upstream Pit River flows). If not critical during the summer for their operations, then why are upstream flows so critical during the much wetter winter/spring season? The winter/spring season coincides with the upstream diverters' opportunity to fill their reservoirs, and the time that is most beneficial to aquatic resources that have adapted to naturally occurring high winter/spring flows.

Possible routes towards solutions:

Without an understanding of how the upstream water availability will be affected by Project mitigations, complete resolution of the license terms and conditions cannot occur. Yet, resolution of all of the issues is partially outside of this relicensing venue (i.e., water rights). For this reason the Forest Service provides the following thoughts on possible paths towards resolution.

- 1) **Determine, more accurately, the actual “harm” to PG&E from junior upstream diverters** and consider this volume during flow negotiations for this relicensing. This would require agreement on the level of “harm” being incurred by PG&E. Currently the Forest Service disagrees with the level of “harm” characterized in the hydrologic data provided to Gallo and Jensen, and submits Appendix D-2 with another perspective. Additionally, FERC’s modeling calculations, as discussed in the DEIS, differ substantially from Forest Service modeling results.
- 2) **The FERC could mandate PG&E to provide higher instream flows exclusively from hydro generation.** This would more adequately give “equal consideration” to other uses of this water as addressed in the 1986 “Electric Consumer’s Protection Act” (ECPA) which amends the Federal Power Act.

To reiterate, the **Forest Service is willing to reconsider and collaboratively discuss flow-related license conditions** following adequate opportunity to review and discuss outstanding relevant data. Therefore, modifications to Forest Service Preliminary flow conditions from those found in the October 2002 response were limited to clarification and combining for consistency with FERC recommendations.

In previous correspondence and meetings, the Forest Service has discussed the role of its environmental process in relation to this Project relicensing. However, a very recent USDA-FS national policy identifies that FERC is the appropriate federal agency to complete the NEPA analysis for hydroelectric projects, as FERC is the agency responsible for issuing the license order. This new policy decision is effective immediately and directs the Regional Foresters to file Final 4(e) Terms and Conditions without a separate NEPA decision document. The Forest Service will continue to work with interested parties in developing Final 4(e) Terms and Conditions and are requesting comments on these “Revised Preliminary Conditions” as discussed below. To obtain a copy of this policy letter or for questions regarding this new policy please contact Bob Hawkins, Regional Hydroelectric Program Coordinator at (916) 930-3994.

During the April 29, 2003 Redding public meeting to receive comments on the DEIS a question was raised concerning which agency would evaluate impacts on upstream effects. In light of this recent policy change the Forest Service is relying on the FERC, as the licensing agency, to address environmental concerns. This includes analysis of upstream environmental effects as a result of the Project in FERC's EIS.

While the attached Revised Preliminary 4(e) Terms and Conditions are being submitted to FERC for inclusion in the Final EIS, they are also being mailed to FERC's service list and the Forest Service mailing list for this Project in the form of a compact disc (CD). A hard copy can be provided upon request by calling (530) 336-5521, or can be obtained from the FERC website. Any interested party who wishes to provide comments to the Forest Service on these Revised Preliminary 4(e) Terms and Conditions, may do so by July 1, 2003 by sending them to the address below:

Hat Creek Ranger District  
PO Box 220  
Fall River Mills, CA 96028  
Attn: Kathy Turner

The Forest Service appreciates the opportunity to provide comments on this relicensing given the magnitude of possible effects to National Forest System lands for the next licensing period. Due to the size of the appendices, they will be filed via overnight mail, and only this cover letter, and Enclosures 1 and 2 will be electronically filed. If you have any questions or concerns on this submittal, please contact Kathy Turner, Forest Service Team Leader, at the Hat Creek Ranger District, Lassen National Forest, at (530) 336-5521.

Sincerely,

/S/ Jack Gipsman

Jack Gipsman  
Attorney for the Forest Service

Enclosures

cc: Kathy Turner, Hat Creek RD, Lassen NF  
Julie Tupper, RHAT  
Kathy Valenzuela, Shasta Lake NRA, Shasta-Trinity NF  
Service List  
FS Mailing List

## **Certificate of Service**

I hereby certify that I am serving the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Fall River Mills, California, this 19<sup>th</sup> day of May, 2003.

                  /S/ Kathy Turner  
Kathy Turner, FS Team Leader