

January 25, 2010

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 – 1st Street, NE, Mail Code PJ-12.3
Washington, DC 20426

filed electronically

Ref: Kilarc-Cow Creek Hydroelectric Project, FERC No. 606-027
Application for Surrender of License by Licensee Pacific Gas and Electric Company
Re: Response of KC Hydro on behalf of Ignored Intervenors, including members of the Save Kilarc Committee, and COMMENTS ON OFFER OF SETTLEMENT submitted on behalf of Tetrick Ranch *et al*

Dear Ms. Bose:

As reflected in our concurrently submitted Request for Commission Determination of Voluntary Licensing of P-606 and Termination of License Surrender Proceedings, we share the goals of the Offer of Settlement submitted on behalf of Tetrick Ranch *et al*. Nonetheless, we consider it important to bring our opinions on the following salient points¹ promptly to your attention.

1. We concur with the opinion of the Settling Parties (a group defined by Tetrick Ranch *et al* that does NOT include all parties who have actually sought a settlement) “that an alternative, viable resolution to this decommissioning proceeding, a process that has been utterly disruptive to their community, is possible,” HOWEVER, we disagree that the proposed accompanying Offer of Settlement provided by these parties should be considered *a priori* a preferred alternative, much less the only option for your consideration.
2. We have also observed the lamentable “deeply-entrenched position of some of the participants that the only action that this Commission can authorize is the

¹ The numbered items include direct quotes and paraphrase statements found in the transmittal letter to subject Offer of Settlement filed as FERC Accession No. 20100122-5126.

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decommissioning and removal of the Project No. 606 facilities without regard to its impacts on the community and non-power interests” but trust that the Commission will take into consideration the impacts to the community and non-power interests when determining whether the removal of Project No. 606 facilities is an appropriate course of action, WITHOUT resorting to a waiver “of certain Commission regulations, in particular Sections 4.31 and 4.33, 18 C.F.R. §§ 4.31 and 4.33,” nor deferring the release of the Draft Environmental Assessment (DEA) “until after a settlement proceeding.” We do not believe that a waiver of the regulations would benefit all participants to these proceedings.

3. We DO request that the release of the DEA be deferred until the Commission has had an opportunity to consider the question raised in our letter submitted concurrently, regarding its jurisdiction over the project within the context of existing Commission regulations. We believe that making findings in accordance with existing Commission regulations will provide the certainty desired by all, including Tetrick Ranch *et al.*

Should the Commission determine that the P-606 project remains within its jurisdiction until conclusion of the license surrender process, we believe it appropriate to consider entering into a settlement process with all concerned parties, including the local stakeholders and proponents of the two alternatives set forth for retention of facilities (e.g. the proposals set forth first by Davis Hydro and subsequently by Tetrick Ranch *et al.*).

4. With respect to “In compliance with Rule 602(d)(2), undersigned Counsel also note that Comments on the Offer of Settlement may be filed by any Participant not later than 20 days after the filing, or by February 11, 2010, and reply comments may be filed not later than 30 days after the filing, or February 22, 2010, unless otherwise provided by the Commission. The Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.602(f)(3), also provide that any failure to file a comment constitutes a waiver of all objections to the offer of settlement.” Sackheim Consulting and Davis Hydro, on behalf of ALL unopposed intervenors in this proceeding who are not represented in this offer of

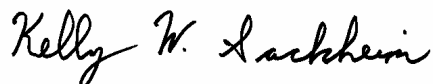
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settlement, hereby formally OBJECT to the offer of settlement and reserve the right to continue to submit comments until such deadline as may be established by the Commission in any notice of this offer of settlement.

The Offer of Settlement, page 7 (36th page of the FERC-generated PDF of Accession No. 20100122-5126), Sec. 2, paragraph 2, naively and/or disingenuously states, “The Settling Parties believe that the implementation of this Offer of Settlement is the only way to achieve the objectives of all of the interests of the community.” The Davis Hydro Alternative, which very public and on-going development seeks and incorporates input from all parties, merits equal consideration by the Commission. Repeated assertions that “time is of the essence” do not negate the fact that Tetrick Ranch *et al* have not given due consideration of public input in determining what is indeed in the public interest.

As we have stated repeatedly, Davis Hydro is committed to a win-win resolution to PG&E’s decision to cease operating this project, that avoids significant unmitigated impacts to all resources and stakeholders. Davis Hydro supports the local community in this endeavor and stands ready to implement its fish enhancement plan with or without a license, respectful of the need to minimize PG&E’s operating costs while making strides forward towards the recovery of Endangered Species Act-listed species. We are committed to build a strong fish resource supported financially by green hydropower and request Commission support of these goals as well.

Sincerely,



Kelly W. Sackheim, Principal

KC Hydro, a partnership of Davis Hydro LLC and Sackheim Consulting

Cc: CarLisa Linton-Peters, FERC; Lisa Whitman, PG&E; FERC P-606 Service List;
additional parties served on behalf of Tetrick Ranch *et al*

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by first class mail postage prepaid or email upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Fair Oaks, CA this 25th day of January 2010.

Kelly W. Sackheim

Kelly W. Sackheim, Principal
Sackheim Consulting
5096 Cocoa Palm Way
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Document Content(s)

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