

February 22, 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: Alternatives for Analysis in Environmental Impact Statement

Dear Ms. Bose:

KC LLC supports the recently noticed (Accession No. 20100219-3008) intention of the Federal Energy Regulatory Commission (FERC) to prepare an Environmental Impact Statement (EIS) before taking action in this proceeding. Absent identification of the Alternatives to be analyzed in the EIS, KC LLC respectfully submits that the following Alternatives might form a starting set for consideration.

1. The *No-Action Alternative*. Although PG&E must surrender its license, this alternative provides a baseline for analysis and also provides insights into conditions that will continue to exist until the FERC orders PG&E to implement a specific license surrender plan.
2. The *Proposed Action*. PG&E has prepared its license surrender application, including a license surrender plan that strives to achieve, to the extent feasible, the dismantling of facilities in accordance with the March 2005 Agreement reached with the Resource Agencies to the exclusion of local stakeholders.
3. The *Tetrick Settlement Agreement*. There is sufficient information presented regarding a facilities retention plan, whereby immediately upon “decommissioning” of the facility by PG&E, a successor would immediately resume hydropower operations and implement certain mitigation measures.

4. Davis Hydro *Evaluation Detour* Alternative. This alternative, described in detail in Attachment I to this letter, builds on *The Kilarc Reconstruction Alternative, A Fish Restoration Proposal* initially presented in June 2008. In this variation, the ultimate disposition of facilities is determined by the demonstrated ability to achieve performance standards for recovery of endangered species.
5. Davis Hydro *Double-Effect* Alternative. This alternative, described in Attachment II to this letter, puts forward an off-site mitigation solution to the urgency of addressing endangered species issues and demonstrating Davis Hydro's desire to aggressively encompass variations that could be negotiated among parties interested in immediate action on fish resources.

Alternative 2 has been around since long before Davis Hydro was involved or Evergreen Shasta was established as a company. Alternative 3 has been submitted for immediate implementation based on an earlier Evergreen Shasta proposal. Alternatives 4 and 5 represent adaptive implementations of Davis Hydro's earlier proposal.

The foregoing alternatives are defined to varying levels of detail suitable for defining studies needed to reach conclusions with regard to the corresponding environmental effects of implementation. Upon conclusion of the requisite studies and analyses, the FERC may determine that variants on the original alternatives would become the environmentally superior and/or staff-recommended alternatives. Davis Hydro has indicated flexibility and introduced aggressive improvements to their Alternatives as our understanding of the biological objectives evolve (see, for example, the questions raised on pages 8, 9 of Kilarc research discussion document attached to Davis Hydro's response to CDFG's filing,¹ enclosed.)

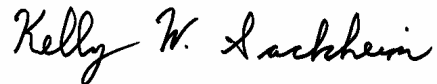
Given that the two developments, Cow Creek on the South Cow and Kilarc on the Old Cow, are entirely physically independent from each other and present vastly different

¹ <http://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=12260954>

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environmental opportunities, staff may opt to treat the final disposition of facilities in each sub-watershed as two separate actions while striving for the highest net benefit.

Sincerely,



Kelly W. Sackheim, Principal

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

Attachments (2), Enclosure

Cc: augmented P-606 Service List

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 22nd day of February 2010.

Kelly W. Sackheim

Kelly W. Sackheim, Principal
Sackheim Consulting
5096 Cocoa Palm Way
Fair Oaks, CA 95628



Attachment I: Davis Hydro Evaluation Detour Alternative

In this alternative, Davis Hydro (DH) enters into a lease/operating agreement with PG&E while the surrender process is suspended pending development of sufficient information to determine whether dismantling facilities is necessary. The core of this Alternative is that the demolition is delayed for a period of time while DH implements its alternative on a trial basis. This will allow data gathering for a better choice between final alternatives, particularly for the Kilarc component of P-606.

The suggested method is as follows:

PG&E would lease the Kilarc site to Davis Hydro at a nominal rate to continue the production of electricity that PG&E would have the first option to purchase. DH in cooperation with PG&E would operate the site. DH would take responsibility for all the repair, maintenance, and operation of the site as in any lease. Davis Hydro would be required to have and maintain insurance to cover concerns of Sierra Pacific and all other parties. DH would be responsive to all of FERC's concerns and License conditions. About 30 percent of the profits would go into a Kilarc Fund and spawning bed creation. The fund would be used for fish resource enhancement and fish research goals under the direction of agency, community, and recreational interests.

PG&E could either hold the Kilarc share of the monies needed for demolition or put them in the Kilarc Fund that would be managed for fish enhancements or eventual demolition if the project fails.

At the end of a specified period the Davis Hydro Project would be evaluated with respect to achieving milestones specified by the Resource Agencies as compared to how well these performance standards may be reached under PG&E's alternative. The best alternative for the fish would be implemented as it becomes evident.

The benefits of this Alternative are the following:

- For PG&E
- ≈ Smooth transition to a new operator,
- ≈ Possibly no immediate demolition costs,
- ≈ Demolition monies are retained until needed,
- ≈ Good community relations by protecting all services being provided
- ≈ Encouraged to work with DH for success at fish enhancement.

- For the Fish Resource Agencies
 - ≈ Immediate action on fish restoration
 - ≈ Long term funding for fish restoration, research, and maintenance
 - ≈ Ability to control restoration efforts and money spent on fish,
 - ≈ Ability to test alternatives and ideas over reasonable time frame
 - ≈ Long term framework for fish resource enhancement.
-

For the Community

- ≈ Community fire and water supply services are retained in full
- ≈ Fishing resource and handicapped recreation site maintained
- ≈ Recreation generally goes unchanged.

For the Fish

- ≈ Cooler water from the hydro project for downstream fish habitat.
- ≈ Downwind fish will not suffer from the acid rains of alternative electricity generation
- ≈ Rapid funding of habitat improvements.
- ≈ Long term hands-on care-taker role of hydropower operation team
- ≈ Combined stewardship of DH, PG&E, community and agencies.

For FERC

- ≈ Alternative is contained inside FERC's normal practice of annual licensing.
- ≈ FERC remains completely in control and is able to pull the plug at any time.
- ≈ Best ability to discern best balance between environmental enhancement and green power production. Specifically, CDFG's concerns about "new and unproven" are addressed at no cost either to the process nor to the interests of any party.

For the Planet

- ≈ The renewable energy produced by the facility will come from an already constructed renewable generation source. This alternative will show the way that small hydro can work constructively with natural resource agencies to maximize global environmental enhancement while improving local fish resources.

To DH, the greatest benefit is that this alternative brings all parties into working in the same direction. Both DH & PG&E have every incentive to work together to make the hydro and fish work succeed. This is because if DH fails, PG&E will have to remove the facilities at great cost and negative community response. DH is incented to perform, for if they do not they will lose the site, the fish research (a love of Dr. Ely), and the ability to help the fish.

Summary

This is an Alternative that allows and encourages all parties to work together. The agencies are incented to cooperate in that they obtain financing for fish projects within an operating framework for providing local money for matching grants for fish restoration projects. The agencies also obtain an immediate funded and long term partner in fish resource enhancement and maintenance.

PG&E and DH are incented to work together in that if the project is successful they meet their monetary concerns and fish resource objectives. This will incent them to maximize fish production and economic resources for the Trust fund operation. The community is incented to help with fish restoration – in that they are getting the services they need, the recreation (including possibly steelhead fishing) they want.

Attachment II: Davis Hydro Double-Effect Alternative

The Fish Resource Agencies² want to dismantle the Kilarc facility to achieve fish resource enhancement. KC LLC (KC) has suggested that such action may only attain limited success and may be partly counter productive. Davis Hydro puts forth this Alternative that may provide more support for fish resource goals than the current PG&E demolition proposal supported by the Fish Resource Agencies. However, as stated by the CDFG recently, these potential gains are uncertain, experimental, and unproven and CDFG prefers to continue with the demolition alternative.

Coming to a clear answer on which alternative is superior within the tight timeline proscribed under the FERC/ NEPA process is unlikely because:

- ≈ On the one hand the Fish Resource Agencies have little data to support that putting water back into the Old Cow will increase the target fish resources significantly, and
- ≈ On the other hand, Davis Hydro cannot show before commencing that its fish spawning and research facility will be productive, nor that its project will throw off sufficient resources to enable fish habitat restoration in the area.

To facilitate a solution and to move quickly in the interests of the fish, we propose as an alternative, to urgently meet fish resource objectives, that the money to be used for demolishing the Kilarc facility instead go to funding off-site mitigation projects that have a greater scientific basis to support an expectation of positive results, such as those proposed for enhancing anadromous salmonids in the Sacramento River Basin as mitigation for four Feather River hydropower projects (e.g., some of the Three-Creek Actions that have already been short-listed by the fish resource agencies as effective mitigation efforts).

Additional funds can be generated by hydropower operations for on-going P-606 studies, and eventual demolition of P-606 facilities, should such be deemed warranted, or can be funded from new sources as they emerge. Davis Hydro would then be free to implement its Kilarc fish enhancement/hydro power project without the need to have the Kilarc site demolished.

This means that the Resource Agencies will immediately get fish population enhancement benefits that will exceed what might be achieved from the Old Cow, and should the Davis Hydro project succeed, the fish would reap the benefits there also. The agencies, in effect get both fish resource enhancement projects funded and enabled rapidly.

Similar to the motivation and method of the Evaluation Detour Alternative, Davis Hydro (DH) would enter into a lease/operating agreement with PG&E while the surrender process is suspended pending development of sufficient information to determine whether dismantling facilities is necessary. The core of this Alternative is that the

² Notably California Department of Fish and Game (CDFG), and the federal National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS).

demolition is delayed for a period of time while DH implements its alternative on a trial basis. This will allow data gathering for a better choice between final alternatives, particularly for the Kilarc component of P-606.

Background

KC LLC is a company that has been set up to undertake the transformation of the Kilarc hydropower facility to a fish resource enhancement/fish research/hydropower facility. KC LLC consists of Davis Hydro LLC and Sackheim Consulting and will be the eventual LLC to operate the Kilarc facility should that come to pass.

KC LLC has reviewed the Draft Habitat Expansion Plan for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead, and has offered comments for consideration by the Licensees for incorporation into the final Habitat Expansion Plan (HEP).³ Likewise KC LLC is suggesting a similar off-site approach to maximize habitat enhancement as the P-606 license is surrendered. The Feather River Habitat Enhancement Agreement (HEA) specifies that “Actions identified in other venues, including unfunded actions, are acceptable for consideration, provided implementation results in a net expansion of habitat over any existing requirements and commitments.”

KC LLC recognizes that the cost of the projects identified exceeds the amount of funds available under the Feather River HEA. The projects are well-developed and justified, and could benefit from P-606 funding earmarked for the same goals. A comprehensive approach, directing all available funding to the best projects, will be most effective in rapidly achieving the goal of conservation and recovery of species. Whether or not the Lower Yuba River Actions are selected for implementation with the HEA funding, P-606 dismantling funds could be re-directed to unmet needs identified under the Three-Creek Actions (the second of the two alternatives identified in the HEP) under this aegis.

Individually, the Big Chico Creek and Antelope Creek Actions represent relatively “shovel-ready,” cost-effective, and well supported actions, that would complement a number of restoration efforts that are ongoing by others and could be supported by Davis Hydro in these watersheds. The combined estimated cost of \$3.7 million could be covered entirely by the P-606 Kilarc dismantling funds, with immediate benefits. We believe that immediate benefits are of interest to the Fish Resource Agencies as any resolution of the P-606 issues is otherwise years away into the future.

³ PG&E and the California Department of Water Resources, as licensees, expect to select and propose one of the two groups of recommended actions described in the HEP for approval by the National Marine Fisheries Service for implementation to comply with the Licensees responsibilities under the Habitat Expansion Agreement (HEA) that was created to complement licensed operations of the Oroville, Poe, Upper North Fork Feather River, and Rock Creek-Cresta hydropower projects, all located on the Feather River. It is understood that this program is anticipated to provide greater gains for the target species beyond project boundaries through identification, evaluation, selection, and implementation of the most promising and cost-effective actions.

The first element of the Three-Creek Actions is ready to provide only partial funding for implementation of Phase 2 of an existing Restoration Project. Even if the Three-Creek Actions were selected for funding under the Feather River Projects' HEA, the total cost estimate of \$46.3 million for the Battle Creek Habitat Expansion Action still would not be met with the \$16.9 million proposed HEA funding, even when added to approximately \$12 million identified by CDFG that may be obligated if additional funds can be identified to complete Phase 2. Funds earmarked for dismantling of the P-606 Kilarc facilities, which benefit has yet to be specifically estimated, could serve to help to bridge the remaining gap and secure funding for Phase 2 in its entirety.

In summary, KC LLC very strongly supports the overall biological goal to expand fish habitat with the physical characteristics necessary to support spawning, rearing, and adult holding of spring-run Chinook salmon and steelhead in the Sacramento River Basin as a contribution to the conservation and recovery of these species. The Kilarc Project focuses on these species, especially steelhead, due the prevalence of good habitat in areas of Cow Creek watershed.

Summary

Without fear of demolition, Davis Hydro's plan for fish enhancement and a fish spawning ground onsite along with a research facility would be enabled. Profits would be harbored in one or several funds for the benefit of the fish, and used under the direction of the Fish Resource Agencies, community and recreation representatives to accomplish fish enhancement goals.

Use of the profits would be directed to the dual goals of providing a steady flow of funds for ongoing fish research and production operations during low water years, and secondarily to be available should the facility ever need to be removed in the future.

How can this be handled within the FERC process? It is an Alternative among others. In the end, Davis Hydro, the Fish Resource Agencies, all will have the same goal, to maximize profits of the hydro so as to maximize revenues to do the most to enhance fish resources and habitat.

The benefits of this Alternative are the following:

- For PG&E
- ≈ Smooth transition to a new operator, dedicated to enhancing fish resources,
- ≈ Demolition monies are used for fish resource enhancements, rather than tearing down community and green power infrastructure,
- ≈ Continuance of community services,
- ≈ A venue to work on new experimental ideas with DH at low cost and under the observation of the agencies for success at fish enhancement technologies in diverse areas, and
- ≈ Excellent agency relations.

For the Fish Resource Agencies,

- ≈ Immediate action on salmonid fish restoration in waters undoubtedly more fertile than the Cow Creek bypass,
- ≈ Possibly a double return if DH is successful,
- ≈ Long term funding for fish restoration, research, and maintenance,
- ≈ Ability to control restoration efforts and money spent on fish, and
- ≈ A venue to test ideas and do research over a reasonable period of time.

For the Community

- ≈ Community fire and water supply services are retained in full,
- ≈ Fishing resource and handicapped recreation site maintained, and
- ≈ Recreation is augmented with educational components of fish anatomy, and reproduction.

For the Fish

- ≈ Downwind fish will not suffer from the acid rains of alternative electric generation,
- ≈ Rapid funding of habitat improvements from two sources,
- ≈ A source of research funds and a field research facility,
- ≈ Inter-watershed communication and cooperation for restoration,
- ≈ Cooler water from the hydro project for downstream fish habitat,
- ≈ Long term work for fish resource enhancement,
- ≈ A new research field station for visiting biologists,
- ≈ Long term hands-on care-taker role of hydropower operation team, and
- ≈ Combined stewardship of DH, community, and Agencies.

For FERC

- ≈ As a preferred Alternative that might meet everyone's goals,
- ≈ This is completely within FERC's process, and
- ≈ CDFG's concerns about "new and unproven" becomes less important in that fish enhancement has already occurred off-site. Anything that Davis Hydro can (and will) accomplish is an additional bonus.

For the Planet

- ≈ The renewable energy produced by the facility will come from an already constructed renewable generation source. This alternative will show the way that small hydro can work constructively with natural resource agencies to maximize global environmental enhancement while improving local fish resources.