



Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

December 16, 2022

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, N.E., Room 1A
Washington, DC 20426

Via Electronic Filing

COMMENTS: FERC No. P-77-314: MOTION TO INTERVENE AND COMMENTS FROM THE MENDOCINO COUNTY FARM BUREAU IN RELATION TO THE NOTICE OF PROCEEDING TO CONSIDER REOPENING LICENSE AND SOLICITING COMMENTS, MOTIONS TO INTERVENE, AND PROTESTS

Dear Secretary Bose,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB would like to submit the following motion to intervene and comments on the FERC notice from November 16, 2022, for the proceeding to consider reopening the license and soliciting comments, motions to intervene and protests for the Potter Valley Hydroelectric Project (Project) under P-77-314.

Motion To Intervene

Pursuant to FERC's November 16, 2022 notice, MCFB wishes to intervene in the proceedings to consider the reopening of the annual license for the Project pursuant to Standard Article 15 of the Project license.

MCFB has engaged in numerous FERC proceedings and filings related to the Project to represent both our affected membership, and agriculture in general, that depend on the water that has been provided by the Project for over 100 years. We are especially interested in any Project related decisions, such as this one, that could further alter the water supply provided by the Project into the Russian River watershed.

The reduction in flows from the 2022 variance request, the inability to operate the powerhouse due to the 2021 transformer bank failure, the future license surrender process and the potential re-opening of the existing FERC license as related to this proceeding (or other efforts) are all contributing to the overall instability of the water supply provided from the Project to the Russian River.

MCFB has a vested interest in preserving agriculture in Mendocino County including the farming and ranching operations within the Russian River watershed. For this reason, MCFB also has a substantial interest in the outcome of this proceeding. It is requested that FERC consider the request from MCFB to intervene accordingly.

Comments

MCFB has reviewed the following documents:

- The filing to FERC from the National Marine Fisheries Service (NMFS) dated March 17, 2022
- FERC's letter to PG&E for the notice of authorization for continued project operation dated April 21, 2022
- FERC's letter to PG&E for a request for a plan and schedule for surrender application and response to NMFS's March 17, 2022 filing dated May 11, 2022
- The response to the March 17, 2022 NMFS filing by PG&E dated July 11, 2022
- FERC's order addressing arguments raised on rehearing dated July 28, 2022
- FERC's letter to NMFS requesting a response from NMFS related to Project operations and ESA/EFH consultation dated August 15, 2022
- The second filing by NMFS to FERC dated October 13, 2022 in response to the August 15th correspondence.

From this review, MCFB would like to offer the following comments. Primarily, MCFB agrees with PG&E's position described in their July 11, 2022 correspondence that there has not been a proven necessity to reinitiate an ESA section 7 consultation for the Project license or for FERC to reopen the Project license.

PG&E clearly lays out the record related to past license amendments, including NMFS's involvement over the past decades. Within this record, the excerpts below were of particular interest.

P.2. The NMFS 2002 BiOp and ITS do not have a 20-year term or any other expiration date, as NMFS alleges. This is consistent with both the ESA and the Federal Power Act ("FPA"), as well as the provisions of the BiOp and ITS.

P. 2. Since issuance of the BiOp, NMFS has never alleged the take described in the ITS has been exceeded and has never requested reinitiation of consultation, until submission of its March 17, 2022 letter, which failed to include any of the voluminous monitoring record covered by over 20 years of monitoring of Project operations.

P. 11. NMFS has not offered any evidence to support the assertion that take has exceeded the ITS or that conditions have resulted that require the Commission to reinitiate consultation. There is no new information that indicates the RPA has not been met, or that the Project operations, contrasted with other factors, are having a greater impact on salmonid species than expected.

P. 12. As an initial matter, NMFS' rationale for requesting interim measures is incorrect. While uncertainty existed related to whether the Project would be relicensed or surrendered during the pendency of the orphan project process, that process has concluded and no timely license applications were filed for a new license for the Project. Accordingly, the Commission will not be making a determination regarding the future licensing of the Project and there will be no future ESA consultation for a license. Rather, the existing

license will be surrendered and any ESA consultation will be limited to temporary impacts to listed species associated with any proposed construction activities approved in a surrender order.

It appears that NMFS has had plentiful opportunity to engage with PG&E over the duration of the previous license term to discuss the RPA and ITS. The timing of the March 17, 2022 letter, just prior to the expiration of the previous license term, brings into question what the ultimate intent may be.

MCFB, being heavily engaged in the recent re-licensing, “orphaning” and now anticipated license surrender and decommissioning related to the Project, views the attempt to reopen the existing license (and additional litigation against FERC for the granting of the annual license to PG&E) as an end run by certain interests to dictate outcomes that will further complicate the interim operation of the Project at the detriment of the Russian River watershed.

Additionally, Commissioner Danly’s statement below from the July 28, 2022 FERC response to the order addressing arguments raised on rehearing, is a good summary of some of the similar concerns that MCFB has in relation to the consideration to reopen the existing Project license.

I agree with today’s decision but write separately to offer a suggestion. When determining whether there are “sufficient grounds” to reopen the Potter Valley Project license, the Commission should ask the following: is it “reasonable to require Pacific Gas & Electric (PG&E)—that is, California ratepayers—to pay to comply with new operational measures that are not required by law for a project that PG&E no longer seeks to operate? One must also bear in mind that compliance typically does not immediately follow an order’s issuance. Orders requiring compliance frequently entail compliance plans which can take years to develop, review, and approve.

The reopening of the current license, amid a license surrender and decommissioning process, does not seem reasonable and FERC should truly ask and answer the question, as Commissioner Danly stated, *is it “reasonable to require Pacific Gas & Electric (PG&E)—that is, California ratepayers—to pay to comply with new operational measures that are not required by law for a project that PG&E no longer seeks to operate?*

MCFB and our members have a strong interest in the current and future operations of the Project. MCFB does not feel that reopening the existing license is reasonable nor justified and therefore is opposed to moving forward with any FERC consideration to open the existing license. MCFB encourages FERC to incorporate the points raised above in the consideration to reopen the existing Project license.

Sincerely,

A handwritten signature in black ink that reads "George Hollister". The signature is written in a cursive, flowing style.

George Hollister
President